

THE  
**T R Y A L S**  
 AND  
**CONDEMNATION**  
 OF

LIONEL ANDERSON, *alias* Munson,  
 WILLIAM RUSSEL, *alias* Napper,  
 CHARLES PARRIS, *alias* Parry,  
 HENRY STARKEY,  
 JAMES CORKER, *And*  
 WILLIAM MARSHAL,

FOR  
**H I G H T R E A S O N,**  
 AS

**Romish Priests,**

Upon the *Statute of 27. Eliz. Cap. 2.*

Together with the Tryal of

**ALEXANDER LUMSDEN** a *Scotchman,*

AND

The Arraignment of **DAVID JOSEPH KEMISH**  
 for the same Offence.

At the Sessions of *Oyer and Terminer* in the *Old-Baily,*  
 on *Saturday January 17th. 1679.*

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Published by Authority.

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L O N D O N,

Printed for *Thomas Collins* and *John Starkey* Book-Sellers in  
*Fleet-Street near Temple-Bar, 1680.*

THE  
TRIALS

CONDEMNATION

OF  
THOMAS ANDERSON, alias Munro,  
WILLIAM ROBERT, alias Napier,  
CHARLES FARRIS, alias Jolly,  
HENRY STARKER,  
JAMES COCKER,  
WILLIAM FARRIS

FOR  
HIGH TREASON

By the  
Romish Priests

Upon the Statute of 27. Edw. Cap. 2.

And for the first time

ALEXANDER LUKSDEN a Scotsman

AND

The Advocate of DAVID JOSEPH KENNEDY  
for the same Offence

At the Court of Law and Chancery in the City of  
on Sunday January 17th 1829

Printed by J. G. Smith

LONDON

Printed by J. G. Smith and J. G. Smith in  
the City of London

# THE TRYALS. &c.

*On Saturday the 17th of January, 1679. at the Sessions-House in the Old-Bayley, by Vertue of His Majesties Commission of Oyer and Terminer and Goal-delivery of Newgate, for the County of Middlesex and City of London, the Persons hereafter named were Arraigned and Tryed. And after the usual Proclamation for Attendance was made, the Court proceeded in this manner :*

*Cl. of the Crown.* **K**eeper, set David Joseph Kemish to the Bar, (which was done.)  
David Joseph Kemish, Hold up thy Hand, (which he did.)

*Thou standest Indicted by the Name of David Joseph Kemish of the Parish of St. Giles's in the Fields, in the County of Middlesex, Clerk, for that thou being born within the Dominions of our Sovereign Lord the King, and being a Priest, made and ordained by authority derived from the See of Rome, after the Feast of the Nativity of St. John Baptist, in the first Year of the Reign of Queen Elizabeth, and before the 15th of November, in the thirtieth year of the Reign of our Sovereign Lord the King that now is, the Laws and Statutes of this Kingdom of England not regarding, nor the Penalties in the same contained any ways fearing, the said 15th day of November, in the thirtieth year of the King aforesaid, at the Parish of St. Giles's in the Fields, in the County of Middlesex aforesaid, traiterously, and as a false Traytor of our Sovereign Lord the King, thou wast and didst remain and abide against the Form of the Statute in this Case made and provided, and against the Peace of our Sovereign Lord the King his Crown and Dignity. How sayest thou, David Joseph Kemish, Art thou Guilty of this High Treason whereof thou standest Indicted, or not Guilty?*

*Kemish.* Not Guilty.

*Cl. of the Cr.* Culprit, How wilt thou be Tryed?

*Kemish.* By God and my Country.

*Cl. of Cr.* God send thee a good deliverance.

*Kemish.* I cannot speak, I am not able to stand upon my Legs a quarter of an hour.

*L. C. J.* What does he say?

*Capt.*

*Capt. Richardson.* He says he is so ill and weak he is not able to stand.

*L. C. J.* Then he must have a Stool.

*Kemish.* I am not able to speak in my own defence, and I have had no time to prepare my self.

*L. C. J. Captain,* He shall speak softly to you, and you shall report it to the Court again.

*Capt. Richardson.* You may speak softly to me, and I will give an account what you say.

*L. C. J.* How will he be Tryed? ask him.

*Kemish.* I would desire my Tryal might be deferr'd till I be in a condition to Answer for my self.

*L. C. J.* What say you, Brothers, I think his Request is very reasonable, he appears not to be in a condition of taking his Tryal now; And Mr. Attorney is willing he should be set aside till next Sessions.

*Mr. Att. Gen.* 'Tis, I think, very fit, if your Lordships please.

*Mr. Just. Dolben.* He must Plead first. Have you recorded his Plea?

*Cl. of Cr.* Yes, 'tis recorded.

*L. C. J.* Why then look you Captain *Richardson*, you must take him back, the Court does think fit, and Mr. Attorney does think fit, by reason of his extraordinary Infirmary, that it is not seasonable to Try him now. And that the World may not say we are grown Barbarous and Inhumane, we are all contented he should be let by. Therefore let him be returned back, and in the mean time you must take care that he have that reasonable looking to as is fit for a man in his condition to have.

*L. C. Baron.* Acquaint him with what the Court says to you.

*Capt. Richardson,* I will, my Lord.

*M. Att. Gen.* My Lord, I desire that the Judges may declare their Opinion in it.

*L. C. J.* They have done so already, we do all consent to it. Therefore take him, and go get him a bed.

*Cl. of the Cr.* Set *William Russel, alias Napper*, to the Bar. Who was Arraigned upon an Indictment of the same form, only the day of the Fact differing, which was laid to be the 27th of *November*, in 30 *Car. 2.* To which he likewise pleaded, Not Guilty, and put himself upon the Country.

*Cl. of the Cr.* Set *Henry Starkey* to the Bar. Whose Indictment was the same, only the Time differing, which was the 26th of *January*, 30 *Car. 2.* And he also pleaded, Not Guilty, and put himself upon the Country.

*Cl. of the Cr.* Set *William Marshal* to the Bar. Who being Arraigned upon a like Indictment, and the time mentioned to be the 15th of *January*, 30 *Car. 2.* And being asked, Whether Guilty, or not Guilty, answered thus:

*Marshal.* My Lord, I do find by this Indictment, that I am Arraigned for the same Crime for which I was tryed before: I do humbly desire to know, Whether, according to Law, I can be tryed twice for the same Fact?

*L. C. J.*



*Lord Ch. J.* No, according to the Law you cannot be tryed twice for the same Fact, nor are you; for before you were Indicted for having an hand in the great Conspiracy, for being a Conspirator in the Plot, and now you are Tryed for being a Priest, and abiding in England.

*Marshall.* I was tryed before your Lordship as a Traytor.

*Lord Ch. J.* You were so.

*Marshall.* Now I am tryed for a Priest.

*Lord Ch. J.* Which is another Treason.

*Marshall.* If I am tryed for a Priest, I conceive I cannot be tryed unless as a Criminal Priest: and I conceive I cannot be tryed as a Criminal Priest, unless it be as a Priest that hath had some attempt or design against the Government.

*Lord Ch. J.* Nay, you mistake there; There may be Priests that have had no hand in the Plot; if you were acquitted for the Plot, yet you remain a Priest still. Do you suppose then that every Priest had a hand in the Plot?

*Marshall.* My Lord, I humbly conceive, that Priesthood as Priesthood is no Crime at all.

*Lord Ch. J.* That is no Crime at all.

*Mr. Just. Dolben.* Come, You must plead without more a do; and you must not use any more Speeches.

*Lord Ch. J.* You must be governed in all things by the direction of the Court.

*Marshall.* I do submit to the direction of this Honourable Bench; but, my Lord, give me leave to say, I suppose I am indicted upon 27. Eliz. Now if it be made appear, that according to that Statute Priesthood alone is not Treason—

*Mr. Just. Dalben.* Then you must speak it afterwards, but now you must plead.

*Marshall.* But if it be at least made doubtful, then it becomes a matter of Law, and I have just occasion to insist upon it, and pray Counsel.

*Mr. Just. Dolben.* You must plead to the Indictment first.

*Marshall.* Why can I ask Counsel after Plea pleaded?

*Lord Ch. J.* Yes, you may if matter of Law arise: and you may have Counsel as to that matter.

*Mr. Just. Atkins.* The Court is of Counsel for you in such a case.

*Lord Ch. Baron.* But you must plead first.

*Mr. Just. Pemberton.* You cannot be heard at all till you have pleaded to the Indictment.

*L. C. J.* Pray take the directions of the Court.

*Marshall.* I have a great deal of reason to submit to this Honourable Court, that hath been so full of Mercy and Clemency, and therefore I do answer, That I am not guilty.

*Cl. of Cr.* How wilt thou be tryed?

*Marshall.* By the King and my Countrey.

*L. C. J.* No, no, that will not do.

*Marshall.* By God and my Countrey.

*Cl. of Cr.* God send thee good deliverance. Set *Alexander Lumsden* to the Bar. Whose Indictment being of the same nature, only reciting the Fact to be 11. *Maij* 31. *Car.* 2<sup>di</sup>. he pleaded, Not Guilty, and put himself upon the Countrey.

*Cl. of Cr.* Set *James Corker* to the Bar; who was also Arraigned for the same Treason done upon the 24. *Octobr.* 30. *Car.* 2<sup>di</sup>. and being asked, whether Guilty or not Guilty, answered in these words.

*Corker.* My Lord, I humbly beg the Judgment of the Court; I humbly conceive, my Lord, I have been already tryed and acquitted for this Crime.

*L. C. J.* Look you, that hath been over-ruled already in the case of *Marshall* just now, who is in the same Condition; You are not now tryed for the same fact. for which you were tryed before.

*Corker.* My Lord, I suppose there is something particular in my case: I was expressly indicted as Clerk, one that received Orders from the See of *Rome*.

*Mr. Just. Pemberton.* His Addition was Clerk, that is all.

*L. C. J.* But you were not charged in that Indictment for this Fact.

*Corker.* My Lord, I pleaded to that Indictment, under that Qualification of Clerk.

*L. C. J.* So men do when they say in the Indictment, Labourer, plead to it in that qualification, but if a man plead by the name of Gent. the Question is not whether he be a Gent. or no, but whether he be Guilty of the Fact he is indicted for; and the Question in your case was not whether you were Clerk or were not Clerk, but whether you had a hand in the Plot or no.

*Mr. Just. Atkins.* If the Jury had found you a Priest at that time, it had been a void finding more than they were to inquire of.

*Mr. Belwood.* He was told so at that time he was not tryed for a Priest.

*Mr. Just. Ellis.* After you have Pleaded, then you may urge what you have to say.

*Corker.* Then I say, I am not Guilty. And he put himself upon the Countrey.

*Cl. of Cr.* Set *Lionel Anderson*, alias *Munson* to the Bar. Whose Indictment was for being a Priest, and abiding here the 28 *Jan.* 30 *Car.* 2. And he pleaded not Guilty, and put himself upon his Countrey.

*Cl. of Cr.* Set *Charles Parris* alias *Parry* to the Bar, whose Indictment was of the same Nature, for abiding here 30 *Maij.* 31 *Car.* 2. And he also pleaded Not Guilty, and put himself upon the Countrey.

*Cl. of Cr.* Set all the Prisoners to the Bar that are to be Tryed. *William Russel*, *Henry Starkey*, *William Marshall*, *Alexander Lumsden*, *James Corker*, *Lionel Anderson*, and *Charles Parry*.

*Captain Richardson.* They are all on.

*Russel.* My Lord, I have been Confined, I have not had my Liberty till within these two or three days.

*L. C. J.* What then?

*Russel.*

*Russel.* I have not had my Friends to come to me, to advise me upon what account I was to be Tryed.

*Capt. Richardson.* He says, he wanted his Friends to advise for what he was to be Tryed.

*L. C. J.* Why, he knows he is to be Tryed for a *Popish Priest*.

*Capt. Richardson.* Here is one says he is sick.

*L. C. J.* Who is that?

*Capt. Richardson.* 'Tis *Anderson*.

*Mr. J. Pemberton.* Then he must have a Chair to sit down on.

*L. C. J.* Wee'l Try him first that is sick.

Then the Prisoners were called to their Challenges, and the Jury of *Middlesex* appearing upon their Summons, and none of them being excepted against, the Twelve that were first called and Sworn, were the Gentlemen after named.

## JURY.

*John Bradshaw.*

*Anthony Hall.*

*Lawrence Wood.*

*Samuel Jewel.*

*Matthew Bateman.*

*Richard Bealing.*

*John Vyner.*

*Thomas Hall.*

*Francis Mayo.*

*Richard Bromsfield, and*

*Martin James.*

*Samuel Lynne.*

Then they were numbred, and Proclamation for Information in usual manner was made.

*L. C. J.* Come, begin with the Sick-man *Anderson*; and set away the rest.

*Cl. of Cr. Lionel Anderson,* hold up thy hand. You that are Sworn look upon the Prisoner, and hearken to his Cause. He stands Indicted by the name of *Lionel Anderson, &c.* Upon this Indictment he hath been Arraigned, and thereunto hath pleaded, Not Guilty; and for his Tryal hath put himself upon God and his Countrey, which Countrey you are. Your Charge is to enquire, whether he be Guilty, &c.

*Then Roger Belwood Esq; of Council for the King in this Cause, opened the Indictment.*

*Mr. Belwood.* May it please your Lordship, and you Gentlemen of the Jury. The Prisoner at the Bar, *Lionel Anderson, alias Munson,* stands Indicted for High Treason, and it is alledged in the Indictment, That he being born within the Kings Dominions, and made a Priest, and having received Orders by pretended Authority, from the See of Rome, he did the 28th. day of *January* last



last come into the Kingdom of *England*, that is, as 'tis laid, in the Parish of *St. Giles in the Fields* in this County; and there he did abide contrary to the Form of the Statute. And this is laid to be Traiterously done. To this he hath pleaded Not Guilty, and we are to prove it upon him by the Kings Evidence, whom we are now to call.

*Anderson*. My Lord, for my staying in the Kingdom, I had the Kings expreis Command, and an Order from the Council-Board in the year 71.) They Ordered *Mr. Peter Welsh*, and my self, and some more to stay, for Writing against the Temporal Power of the Pope, for the Power of the King of *England* against the Court of *Rome*. After this Plot was Discovered, I came to the King, being afraid of being involved in the general Calamity. So I came to the King, and said, Sir, I desire to know what I may do.

*L. C. J.* Do, Why?

*Anderson*. Good my Lord hear me out. My Lord *Privy Seal* brought me an Order from the Council Board, and so 'tis Recorded, and I think *Dr. Oates* will be so just to me, as to acknowledge that he hath seen it, and this is all that I have to say.

*L. C. J.* If you have an Order from the Council to protect you, you must apply your self elsewhere; our business is to try the single issue, whether you have offended against the Law.

*Anderson*. My Lord, I that am but a poor single *Individuum*, who am born with an innate and implicit Obedience to my King, judge whether it lies in my power to dispute with him and his Council, whether they can do this or no, or that I must obey the Kings Command.

*Mr. Belwood*. This is not a time for him now to insist on this matter.

*L. C. J.* Reserve your self till the Kings Counsel have done, and the Evidence given.

*Mr. Just. Jones*. Let him save his Speech till such time as he comes to answer for himself.

*L. C. J.* Give him a Chair, if he be not able to stand.

Then *Sir John Keiling*, one of the Kings Learned Counsel in the Law, pursued the Charge thus,

*Sir John Keiling*. May it please your Lordship and you Gentlemen of the Jury, *Lionel Anderson* otherwise *Munson* the Prisoner at the Bar, stands indicted here, for that he being a Subject Born within the Dominions of the King, hath taken Orders from the See of *Rome*, and hath contrary to the Law come into *England*, and stayed here as a Traytor; for this Treason he is indicted, and the Indictment is grounded upon the Statute of the 27th. *Eliz.* a Statute made almost a hundred years since, and it was upon great occasion; for it tells you plainly, That these Priests that had taken Orders from the See of *Rome*, were not only busie in seducing and perverting the Kings Subjects to the *Romish* Superstition, but they had made many attempts upon the Government, raising Sedition and Rebellion and levying of War against their Sovereign,

which



which is evident from the Preamble of the Statute it self. And it is true, the lenity and mildness of our Princes hath in a great measure let this Statute lye asleep: they have not been willing to execute the severity of the Law upon all occasions at all times; but the occasion being renewed at this time, for the remedying of which, this Statute was principally made, (that is to say, raising Seditions, and Commotions, and Rebellion against the King, the particulars of which I shall not enlarge upon, it hath been notorious in this place) that is the reason of the present prosecution of these Persons. Who have not been contented to enjoy the indulgence of our Princes, (which hath been extended to them, notwithstanding all their former numerous affronts that they have given) but have rais'd new Commotions, and made attempts upon the Person of our King, and of our Government, and that is the occasion upon which these Persons come to be Tryed. It is not purely (tho' that is a main ingredient) that they are tryed quatenus Priests, but as Ordained by the See of Rome, and coming into England and abiding here. For a Priest, if he be Ordained by the See of Rome, if he comes not here, can do no hurt; but it is his coming and abiding here, that makes him the Subject of this Punishment, and hath occasioned this mans Prosecution. Now my Lord, we shall prove that this Anderson alias Munson hath taken Orders from the See of Rome, whose authority constituted him a Priest, and this we shall prove by several instances and steps; and then we doubt not but you will take that care for the preservation of the Government, and for the Peace and Quiet of the Nation, which becomes you, and give a Verdict according as your Evidence shall lead you.

Then Sir George Strode, the Kings Serjeant at Law,  
managed the Evidence.

Mr. Ser. Strode. My Lord, we shall call our Evidence. The Fact is this, That this Person being a Subject of the Kings, and having received Orders from the See of Rome, that is, being a Romish Priest, did come and abide here contrary to the Statute; not that his Priesthood is the Crime, no tis his being a Subject of the Kings, and owning an Authority from abroad, and thereby denying the Authority of his own Sovereign. To prove this, we shall call Dr. Oates, Mr. Bedlow, Mr. Dangerfield, and Mr. Prance, (who were all Sworn.) Set up Mr. Dangerfield first. Mr. Dangerfield, tell my Lord and the Jury what you know of the Prisoner at the Bar, Mr. Anderson.

Mr. Dangerfield. What I do know against him?

L. C. J. Yes, for being a Priest.

Mr. Dangerfield. What, that particularly?

L. C. J. Yes, that particularly.

Mr. Dangerfield. My Lord, about the latter end of May, or beginning of June, when I was a Prisoner for Debt in the Kings-Bench, this person took occasion to speak privately to me, and desired me to go into his Room: he told me he had received a Letter from my Lady Powis, and that Letter was burnt. But the next Letter that

came from my Lady *Powis*, he would shew it me. And he did so; and the Contents of the Letter was, as near as I can remember, just thus: Sir, You must desire *Willoughby* to scour his Kettle; which was, to Confess and receive the Sacrament, to be true to the Cause. A little after, that was Saturday, and I think it was the next day, being Sunday, I went into Mr. *Andersons*, alias *Munson's* Chamber, and there I went to Confession, and received Absolution. And he sent me to another person to receive the Sacrament, who was saying Mass at that time. And when I had received the Sacrament and returned to him again, he did tell me, That he, as a Priest, did give me free toleration to go and be drunk, and drink with one *Stroude*; and I asked him, being something scrupulous in the matter, Whether I might lawfully do it, having but just received the Sacrament? he told me, Yes, he gave me authority so to do, being for the good of the Cause.

*L. C. J.* Were you a Papist then?

*Mr. Dangerfield.* Yes, I was.

*Mr. Just. Atkins.* You went to Confession to him, and received Absolution?

*Mr. Belwood.* What was the good of the Cause that he meant?

*Mr. Serj. Strobe.* If you please, give an account of the whole thing.

*Mr. Dangerfield.* That was, as I was employed in a general Affair for the *Carbolicks*: for I was to use my endeavour to bring over *Stroud* to be a Witness for the Lords in the *Tower*, concerning the Plot, and to invalidate Mr. *Bedloe's* Testimony.

*Anderson.* Here I am upon my Life and Death; all the World knows me, that hath heard of my Name——

*Mr. Just. Pemberton.* Pray make no Speeches, if you will ask any Questions you may.

*Anderson.* No, I wont. I wish that all the Punishment of Hell and Damnation may come upon me, if I ever opened my mouth to this Rogue for one Farthing, or about any business in the World.

*L. C. J.* You must not call him Rogue in open Court. Let us have that respect shewn us that is fitting, and so shall you have, but this Language we must not suffer.

*Anderson.* In the first place, I will bring all the Prisoners in the *Kings-Bench* Prison to testify, That I desired to be removed to *Newgate*, for here was the greatest Rogue come in that was in England.

*Mr. Just. Pemberton.* This must not be suffered.

*L. C. J.* If you will ask him any Questions, you may.

*Anderson.* Well, come Mr. *Dangerfield*, in the first place, Who ever saw you with me? 'Tis impossible but some body must see you with me, if we were together, as you say.

*Mr. Dangerfield.* My Lord, there is one *Hill*, that is now a Prisoner in the *Kings-Bench*, that saw me several times go into his Chamber.

*L. C. J.* Was there any body by when you confess'd your self to him?

*Mr. Just. Dolben.* Confessions use to be in secret.

*Mr.*

*Mr. Dangerfield.* No, my Lord, he was not in the Chamber, neither was it reasonable he should, but he saw me go in often.

*Anderfon.* Surely, *Mr. Dangerfield*, you and I could not be so well acquainted, but somebody or other must take notice, that we spoke together sometimes. Now if you can produce any one body that will testify it, I will be bound to be hang'd, and say no more.

*Mr. Just. Atkins.* He is not bound to bring Witnesses to this purpose. He swears the Fact charged upon you positively.

*Mr. Dangerfield.* This *Hill*, my Lord, that is in the *Kings-Bench*, hath made Oath of it before *Mr. Justice Fosse*.

*Anderfon.* But, my Lord, this one thing I have to say against this man. There is a Statute made since the King's most happy Restoration, enumerating Treasons, which says, That all Treasons shall be as in that Act: And further adds, That none shall be Convicted of Treason, but by two lawful and credible Witnesses. Now the wisdom of our Legislators, having an Eye to future Safety and past Practices, does provide, That no one shall suffer as a Traytor, but one that is by good and credible testimony convicted of Treason.

*L. C. J.* Pray speak out, Sir, for I cannot hear you.

*Anderfon.* My Lord, I understand the meaning applicable to me thus, That since the Statute does use the word (Credible) as well as Legal, it does judge that both would be very necessary. Now that he is not a credible Witness I can prove——

*L. C. J.* Why is he not credible? certainly if he be legal he is credible.

*Anderfon.* No, my Lord, that does not follow. First the——

*Mr. Recorder.* 'Tis not his time to make this sort of defence.

*Mr. Just. Dolben.* He should have done it before the Witness was sworn, if he would except against his Testimony.

*L. C. J.* But why is he not a good Witness, pray?

*Anderfon.* My Lord, a man pilloried twice, that hath broke Prison once, and committed other hainous offences——

*L. C. J.* Where is the Record of any of this?

*Anderfon.* My Lord, I'll tell you how I prove it. That worthy Gentleman, *Col. Mansel*, whom this Villain would have involved in——

*L. C. J.* You must not do thus, abuse persons with words without proof.

*Mr. Just. Pemberton.* He must not be suffered so to do.

*Anderfon.* My Lord, I will do so no more, indulge a little to my innocency and infirmity.

*L. C. J.* You don't seem to have so much infirmity upon you.

*Anderfon.* *Col. Mansel*, when this Gentleman was the Kings Evidence, as he is now, brought in the Record of this Gentlemans being pilloried, and the Council did not think fit to commit *Col. Mansel*, but committed him.

*L. C. J.* Have you that Record here?

*Anderfon.* I have not.

*Sir John Keiling.* We pray we may go on then.

*Mr.*



*Mr. Serj. Strobe.* Set up *Dr. Oates.* *Dr. Oates,* will you tell what you know of this matter.

*Dr. Oates.* My Lord, he is a Priest. I can in sincerity say it. I have heard him say Mass my self.

*L. C. J.* Where?

*Anderson.* 'Tis very true, I acknowledge I did it. But my Lord I will shew you. Mass is no proof of a Priest: for first the Statute makes a distinction of Priests——

*Dr. Oates.* He does execute the Office of a Priest; for I have been at Confession with him as a Priest, and have seen him Consecrate the Sacrament, and I have seen his Letters of Orders as a Priest.

*L. C. J.* Did he wear the Habit of a Priest?

*Dr. Oates.* Yes, at Mass.

*Mr. Belwood.* Pray, Sir, are you sure you saw his Orders as a Priest?

*Dr. Oates.* Yes, I did.

*L. C. J.* Did he shew you the Letters of his Orders?

*Dr. Oates.* Yes, he did.

*L. C. J.* Of what Order is he?

*Dr. Oates.* A *Dominican-Fryer* he is.

*L. C. J.* What can you say to that?

*Anderson.* I can say enough; but what can I say against the King's Evidence? Your Lordship sees this makes a very fine Jingle, but there is no proof of it.

*L. C. J.* We can go no further than the Evidence. He says, You are a *Dominican-Fryer*: That he heard you say Mass: That he saw you Consecrate the Sacrament. And I am sure you allow none but a Priest to do that.

*Anderson.* I understand by the Laws of *England*, that I am tryed upon a Statute which makes Priesthood a Crime. Now I will ask *Mr. Oates* a Question: *Mr. Oates,* Can you prove, That I received Orders from the See of *Rome*? You are to prove by this Statute three things against me. I am tryed upon a Penal Statute, which ought to be construed most in favour of the Prisoner.

*Mr. Just. Pemberton.* Ask him any Questions, if you will, but this is not your time for arguing.

*L. C. J.* Look you, we must do with you as we have done with others, and will do with the rest. If you mean that this Statute should never have any Effect, that is, that the Priests shall not be convicted as such, unless we can produce Witnesses, that saw them take Orders, then you have avoided all the Statute; but if so be it be plainly proved, That you have done the Acts of a Priest, those that none are allow'd of to do, or undertake to do, but a Priest, is not this a satisfaction, and a plain one too, to your self and all the World, that this Issue, whether you are a Priest, or not a Priest, is well proved in the Affirmative.

*Dr. Oates.* My Lord, I saw his Letters of Orders.

*Anderson.* My Lord Chief Justice, I would speak a little to what you say.

*Mr. Just. Pemberton.* Look you, Sir, you must not have such liberty



berty as this granted to you. You may, if you will, ask Questions, but it is not your time to dispute.

Mr. *Just. Jones*. You must not invert the Order of Tryals. When a Witness is called, he must give his Evidence. If you will ask him any Questions you may do it. But if you will observe any thing, you have time to do it when the Kings Witnesses are all heard.

Mr. *Just. Atkins*. Dr. *Oates*, the Prisoner did not understand sure what you said. Did not he confess to you he had Orders from Rome.

Dr. *Oates*. Yes, he did confess so.

L. C. J. You confessed it your self.

*Anderson*. My Lord, how comes it to pass, that I did not come here in a Yellow Coat, and was not arraigned for a Fool? If I am a Priest, that I should tell him I was such an one.

L. C. J. Nay, I can't tell, because you did not put it on. If you would ask him any Questions, do.

*Anderson*. Yes, Whether you do know me to be an *Englishman*? And whether you saw me take Orders from the See of Rome?

Dr. *Oates*. You said you were an *Englishman*, and a Gentleman, and the son of an *English* Gentleman.

L. C. J. Do you deny you are an *Englishman*?

*Anderson*. I am not, nor no man is to be Tried upon a presumption; 'tis but a conceit in Law, and penal Laws are to be taken strictly in favour of the Prisoner.

L. C. J. Me-thinks you speak very like an *Englishman*?

Mr. *Belwood*. My Lord, we call now Mr. *Bedloe*. You know the Question, what it is Sir, concerning the Prisoners being a Priest.

Mr. *Bedloe*. He is a Priest, and an *Englishman*, if his Mother was honest, and he honestly born; for he is Mr. *Andersons* son of *Oxfordshire*, as I was told.

L. C. J. But what say you to him, as to his being a Priest.

Mr. *Bedloe*. I have heard him say Mass.

L. C. J. Did you ever receive the Sacrament from him?

Mr. *Bedloe*. Never. But I have seen him Administer the Sacrament, and he was in a Priests habit.

L. C. J. Where?

Mr. *Bedloe*. I think it was at the *Venetian* Residents; I am sure it was at some of the Embassadors Houses.

*Anderson*. This matter is so unlikely, I know not what to say to it.

Mr. *Just. Pemberton*. Will you ask him any Questions?

*Anderson*. Upon my Salvation I never saw him before.

Mr. *Just. Dolben*. It is a strange thing, that you should take upon you to say upon your Salvation you never saw him. How many might come into a Room, and you not see them while you are at Mass?

*L. C. J.* He might see you, tho' you did not see him. He might come in, and you not see him.

*Mr. Just. Atkins.* Is that any argument, or any thing to the purpose, or does that contradict the Evidence? Does the Minister, or ought he to know all his Congregation whilst he is in Preaching?

*Anderson.* I never saw him, I say. My Lord, I'll give you but one Argument, which is called *Argumentum Congruentiæ*.

*Mr. Just. Jones.* Will you ask him any Questions?

*Anderson.* To what purpose will it be for me to ask him?

*Mr. Bedloe.* When he was first taken I was not stirring, but while I was making ready, they told me, There was one suspected to be a Priest. I heard him speak in the next Room, and I knew his voice, and said, That is Mr. *Anderson*. I presently knew his tongue before I saw him.

*L. C. J.* You knew him very well then?

*Mr. Bedloe.* I never had any great converse with the man: when he was taken, they asked me, If I knew any thing of this man about the Plot? I told them, No; but he was in Orders from the Church of Rome: for I heard him say Mass at such a place. He told me, said he, I have been in Orders, but I revok'd them, and turned Protestant.

*Mr. Belwood.* Set up Mr. *Prance*. Pray, Sir, tell what you know.

*Mr. Prance.* My Lord, I have heard him say Mass several times at *Wild-house*, and he hath given the Sacrament there, and I have seen him take Confessions——

*L. C. J.* How often?

*Mr. Prance.* Several times.

*L. C. J.* Then you know him very well?

*Mr. Prance.* Yes, very well.

*Anderson.* I never saw him in my life.

*L. C. J.* But he hath seen you.

*Anderson.* My Lord Chief Justice, I will bring Witnesses to prove, That I never did say Mass at *Wild-house*, nor went to the Chapel: I was an Excommunicated man, for writing for the King's Temporal Power against the Pope.

*L. C. J.* How long have you known him?

*Mr. Prance.* Seven Years.

*L. C. J.* How often have you seen him say Mass?

*Mr. Prance.* A dozen times.

*Anderson.*

*Anderson.* It may seem strange that I should have the impudence to deny what this worthy Gentleman says. *Mr. Prance* dare you say you know me?

*L. C. J.* Why, were you never there?

*Mr. Just. Jones.* Well, well, will you ask him any Questions?

*Anderson.* Who did I give the Sacrament to?

*Mr. Prance.* A whole Rail-full hath been at the Sacrament at a time, several people I have seen receive it from him.

*L. C. J.* Did he deliver the Sacrament to you?

*Mr. Prance.* No, he did not, I commonly received at *Somerset-House*.

*Mr. Serj. Strobe.* We have done, my Lord.

*Mr. Just. Jones.* The Kings Counsel have done with their Evidence, and now you may say what you will.

*Anderson.* My Lord Chief Justice, may I speak now?

*L. C. J.* Yes, you may.

*Anderson.* My Lord, all the World knows me, and I am known to most of the Dignified Clergy in *England*: My Lord Bishop of *London*, and *Dr. Lloyd*, and the Bishop of *Durham* sent to me to tell me, that if they knew of my Tryal they would be here. My Lord, I have lain under an ill Censure for scribbling and writing against the Temporal power of the Church of *Rome*. I never said Mass in any *Papish* Church, I am confident, these ten Years: that I have said Mass, I won't deny. I would not tell a lye to save my own life, nay, nor would I tell a lye to take away the life of the greatest Villain upon Earth. But, my Lord, I protest there is not one word true that hath been Sworn against me, but what *Dr. Oates* hath said concerning my saying Mass. Oh! my Lord, I would not deny it if I were to be Hang'd presently, and is not that a great evidence of my innocence and sincerity. But this does not prove that I am guilty of what I am accused for; for I am indicted upon a Penal Statute, and three things must be proved strictly to bring me within that Law; First, that I am an *Englishman*—

*L. C. J.* 'Tis proved you are an *Oxfordshire* man.

*Anderson.* No, my Father is *Lincolnshire*, and my Lord Chief Baron knows him.

*Lord Chief Baron.* I do know a Gentleman of that name there.

*Mr. Bedlow.* I was told he was *Oxfordshire*.

*Mr. Just. Dolben.* He speaks it himself to be an *Englishman*. All the World knows it by your Speech.

*Anderson.* I know my Father is so.

*L. C. J.* Why do you deny it your self?

*Anderson.*

*Anderfon.* 'Tis one thing to deny it, and another thing to have it proved so. I am not to prove it, they are.

*L. C. J.* He says you are so.

*Anderfon.* He talks like a Parrot: these things are to be proved strictly; no mans life is to be taken away by presumption, which is but a Conceit in Law, and ought not to overthrow that Maxim of Law, That Penal Laws ought to be taken most strictly in favour of the Prisoner, and I ought to be proved *ad literam* within the Law, and that according to the Statute made since his Majesties happy Restauration, by two lawful Witnesses, and not only by two lawful, but by two Credible Witnesses too. And I suppose the Gentlemen of the Jury being apprized of this my Exception, if they will take this for truth that these men say, whom yet perhaps they would not trust for 6d. in their Shops, they do as it were wage the Law, and take it upon their Consciences, that what these men say is true.

*L. C. J.* So they do.

*Mr. Just. Dolben.* If these things are not well proved, nothing will be proved.

*Mr. Just. Atkins.* Have you any Witnesses that you would call?

*Mr. Just. Pemberton.* If you will call any, you may.

*Anderfon.* How shall I call them, when I did not know of my Tryal.

*Mr. Recorder.* If you will send for any Witnesses, the Court will stay, if they be to any thing material.

*Anderfon.* My Lord, I have against this Gentleman *Mr. Dangerfield* almost all the Prisoners of the *Kings Bench* for Witnesses.

*L. C. J.* Call them, and name them.

*Anderfon.* *Mr. Adderly*, *Mr. Puller*, who can say that I never drunk a Pot of Ale with this man while he was there.

*L. C. J.* Who would you send for?

*Anderfon.* Those persons, to prove that I had a grudge and prejudice against this man, and that I desired to be removed to *Newgate* for that very reason.

*Mr. Just. Dolben.* But the Question is, Whether you be a Priest, or no? And you can't send for any one, that knows you, but will say, That he hath taken you for a Priest all along.

*Anderfon.* But still 'tis but a Presumption, not a Proof.

*Mr. Just. Dolben.* The Jury is to be Judge of that, how far that goes.

*L. C. J.*



*L. C. J.* What do you expect for proof? Do you imagine there should be no proof to convict you upon that Statute, unless we produce some Witnesses that actually saw you take Orders?

*Anderson.* Yes, I suppose so, my Lord, because Penal Statutes are to be taken strictly.

*L. C. J.* Look you then, How vain would you make a Statute of England, the Laws of your Countrey? How idle a thing were it to expect any possibility of proof, such as to convict a Priest, if this be the interpretation of the Law, That no man should be convicted by a Jury upon this Statute, but one against whom two witnesses should swear they saw him take Orders? where can we find such a Witness?

*Anderson.* Admit that this Law were thus evaded, yet there would be no inconvenience, and I will prove it to your Lordship by Authority. It was the opinion of all the Judges, delivered about nine years agoe to the King and Council, upon a Question about Laws against the Romish Recusants, they all agreed, That this Law was only made *in terrorem*.

*Mr. J. Pemb.* Look you Sir, you must not talk so, it is not to be permitted.

*Mr. J. Dolben.* Will you go to arraign the Judges here?

*L. C. J.* No, no, the Kings Counsell did very honestly and prudently upon that matter, for said Sir *John Keiling*, 'tis very true, our Kings have not since this Law was made, put the Statute in execution unto Rigor, till you your selves occasioned it: but still the Law was a good Law, and absolutely necessary at its making, as necessary as the preservation of the Queens life, and the quiet of her Dominions; and now 'tis become as necessary for the preservation of the Protestant Religion, which all your Arts are employed to undermine; and more necessary again, for the preservation of our Kings life, against which your contrivances are so bent.

*Mr. J. Pemb.* Do you think that you shall be heard here to dispute against the Law, and say it was no matter for the Law, it is a void Law, and scandalize the Judges, that they gave it for their opinion, that it was only *in terrorem*?

*Anderson.* No, I dispute for the Law.

*Mr. J. Pemb.* You must employ your time otherwise if you intend to be heard,

*Anderson.* Then this is that I require, I desire these things may be proved, First that I am an Englishman, and then that I took Orders from *Rome*, and then that I abode here contrary to the Statute, which things in this penal Statute must be proved.

*L. C. J.* You have upon the matter proved the first your self in your appeal to my Lord Chief Baron, that he knew your Father, who is a *Lincolnshire* man.

*Anderson.* I might be bred and born beyond Sea, tho my Father was so.

*L. C. J.* If you will give no proof to the contrary, a little proof will serve the Jurys turn, hearing you speak, and knowing your Father was a *Lincolnshire* Gentleman.

*Anderson.* No Negative can be sworn, they must prove the affirmative.

*L. C. J.* That will turn the proof upon you to the contrary.

*Mr. J. Atkins.* A reasonable proof against you, with such probability, will put it upon you to disprove it.

*Mr. J. Pemb.* Look you *Mr. Anderson*, if you have any witnesses to call for, or send for, the Court will give you leave to stand by a little and send for them; but if you continue to argue in this manner, the Court will give their directions to the Jury.

*L. C. J.* But *Mr. Anderson*, the Court will do you all the Justice that can be expected. If you have any material witnesses to be sent for, the Court will have patience till they come; but then you must be sure they are material witnesses, for we will not go to loose time upon a bare surmise. If it be only to prove this Negative, that *Mr. Dangerfield* was never in your company in the *Kings-Bench*, it will signify nothing, for there are three witnesses without him.

*Mr. J. Pemb.* Have you any witnesses to prove that you were born beyond Sea, or any thing that is material, we will stay for them.

*Mr. J. Ellys.* There is nothing now in question, but whether you be an Englishman and a Priest; and if you can prove that you are not so, you say well. But I think you deny not now but that you are a Priest, only you would have us prove that you are an Englishman. Your Speech betrays you, and there is so much Evidence against you, that I have not heard in any Case as I know of. And all your Witnesses will be to little purpose.

*Anderson.* Only this I desire to observe, That I have been a man always countenanced by the best of Kings, and His Privy Council; and if the Parliament had not been dissolved, I had been protected by the Parliament: Now I say, if your Lordships think me worthy of any consideration (as I have been a man that have given several testimonies of my Loyalty, and Obedience to the Government) I desire your Lordships would please to stay till you know the Kings pleasure.

*L. C. J.* You know where you must apply your self for that, we are barely upon our Oaths, and so is the Jury too, to try the Fact, whether you be a Priest; and this I will tell you, and I must say to you, I dare appeal to your own Conscience, whether this Issue, your being a Romish Priest, is not as plainly and evidently proved, to the satisfaction of all mankind, as any thing can be?

*Anderson.* But 'tis all by presumption still.

*L. C. J.* Well, Gentlemen of the Jury, the matter that he insists upon, are Two things; First, says he, You have not proved me to be an Englishman, and yet at the same time he appeals to such as knew his Father, to be an English Gentleman; and his Language, his Tongue betrays him. 'Tis true, some kind of Evidence is to be given, that he is an Englishman, he himself tells you, that he is born of English Parents; but 'tis a foreign matter

matter, that he should be born beyond Sea. And if it were so really, then it comes on his side, if he can produce any witness he says something, otherwise we leave it to you, whether you are not satisfied in your Consciences, by hearing him speak, and understanding who his Father was, that he is an Englishman. The next thing is for his being a Priest: I do not know, nor can there be expected a plainer proof than this that hath been given, because he doth those Acts which none but a Priest amongst them does; he says Mass, he Consecrates the Sacrament, he takes Confession, he gives Absolution, and all this proved by Four Witnesses.

*Ander son.* That the Clerk does at Mass, give Absolution.

*L. C. J.* Does, or can any but a Priest Absolve?

*D. Oates.* My Lord, the Clerk, he that serves at Mass at that time, gives *pro forma* Absolution to the Priest, without which, the Priest cannot approach to the Altar, after he hath made a general Confession for the whole Congregation, the Clerk absolves the Priest, that he may Absolve the Congregation.

*L. C. J.* Well, the Fact is plain upon you, we must never expect to convict a Priest upon this Statute, if such proof is not sufficient.

*Mr. J. Dolben.* He does acknowledge that Doctor *Oates* hath heard him say Mass.

*L. C. J.* Go on to the next.

*Mr. Belwood.* The next we will Try, shall be *James Corker*, with whom the Jury was charged as with the other.

*Mr. Belwood.* May it please your Lordship, and you Gentleman of the Jury; *James Corker*, the Prisoner at the Bar, stands Indicted for High Treason, for that being born within the Kings Dominions, and made a Priest by Authority from the See of Rome, did traiterously come and abide in *England*, contrary to the Law. To this he hath pleaded *Not Guilty*.

*L. C. J.* Well, call your Witnesses.

*Mr. Serj. Strobe.* Doctor *Oates*, Mr. *Bedloe*, and Mr. *Praunce*, (who were all sworn) Doctor *Oates*, pray tell my Lord, and these Gentlemen, what you know of this Mr. *Corkers* being a Priest.

*Dr. Oates.* My Lord, he hath said Mass at *Somerset-House*, and before the Proclamation and Declaration in 1674. made against the Catholics, he was one of the Queens Priests, he is a Benedictine Monk, and he hath said Mass at *Somerset-House*, and I have heard him say Mass at the *Savoy*.

*L. C. J.* In a Priests Habit?

*Dr. Oates.* Yes, I have seen him in a Monks Habit.

*Corker.* When?

*L. C. J.* Have you ever seen him give the Sacrament?

*Dr. Oates.* Yes, I received the Sacrament from him myself.

*L. C. J.* Where?

*Dr. Oates.*



*Dr. Oates.* In the *Savoy*.

*L. C. J.* Did he Consecrate the Sacrament?

*Dr. Oates.* Not that that I received, I cannot say whether he did or no.

*L. C. J.* Do any Administer the Sacrament but Priests?

*Dr. Oates.* They are in Orders first, And 'tis against the Laws of the Church for any but Priests to do it.

*L. C. J.* None use to do it but Priests, doe they?

*Dr. Oates.* I can't tell; but he that I took it from, I always took to be a Priest: besides, I saw his Patent to be Bishop of *London*, and they don't use to make them Bishops before they be Priests.

*L. C. J.* Did he shew it you?

*Dr. Oates.* I saw it.

*Mr. J. Atkins.* From whom was that Patent?

*Dr. Oates.* It was from the See of *Rome*.

*Mr. J. Atkins.* Under what Seal was it?

*Dr. Oates.* I can't tell that, but I remember that I saw the Patent.

*L. C. J.* Well, will you ask him any thing?

*Corker.* When was it that you heard me say Mass?

*Dr. Oates.* The first time that I heard him say Mass, is near upon Three years agoe, and then I heard him say Mass about the last winter was Two years.

*L. C. J.* How often have you heard him say Mass?

*Dr. Oates.* Several times, a dozen times I believe.

*Corker.* Was there any body with you when you heard me say Mass?

*Dr. Oates.* I believe there was an whole Church full at *Somerjet-Hause*.

*Corker.* Can you nominate any in particular?

*Mr. J. Atkins.* How can he do that? He says there was an whole Church full.

*M. J. Pemb.* Will you ask him any more Questions?

*Corker.* No.

*Mr. Serj. Strobe.* Then set up *Mr. Bedloe*. Pray Sir, will you tell my Lord and the Jury, what you know of *Mr. Corker's* being a Priest.

*Mr. Bedloe.* I have seen him wear the Habit of a *Benedictine* Monk, before the suppression of the *Covent* in the *Savoy*: and I have seen him Confessing several people in *Somerjet-House*.

*L. C. J.* And gave them Absolution?

*Mr. Bedloe.* Yes.

*L. C. J.* Doe they use to let them see when they confess?

*Mr. Bedloe.* They confess in publick, but they speak so softly we can't hear, but the whole Chappel sometimes may be full of people Confessing.

*L. C. J.* When was this?

*Mr. Bedloe.* About four or five years since, when *Father Lathum* was there.

*L. C. J.*



L. C. J. Did you ever hear him say Mass at Father *Lathum's*?

Mr. *Bedloe*. No, I never saw him say Mass, but only Confess.

L. C. J. Did you never see him deliver the Sacrament?

Mr. *Bedloe*. No, my Lord.

*Corker*. When you saw me in my Habit, Was it when you came to Father *Lathum's*?

Mr. *Bedloe*. I Judge so it was several times; with several of them.

*Corker*. Can you nominate any one that saw me at the same time?

Mr. *Bedloe*. There were a whole Chappel full of Catholics.

Mr. *Justice Pemberton*. That is no great matter whether he can or no.

Mr. *Justice Atkins*. 'Tis an Immaterial Question, Why do you ask it?

Mr. *Bedloe*. My Lord, What I did, was done so privately, that if I went but from *Strand-Bridge* to the Monks, I either took a Boat and went by Water, or a Coach and went round about to avoid Suspicion.

Mr. *Belwood*. Then set up Mr. *Prance*. Pray Sir tell what you know of this.

Mr. *Prance*. I have heard him say Mass at Mr. *Passon's* in *Duke-Street*.

L. C. J. How often?

Mr. *Prance*. Never but once.

*Corker*. When Sir?

Mr. *Prance*. It may be two years agoe.

Mr. *Justice Atkins*. That is another place too, Mr. *Corker*.

L. C. J. Have you any thing to Ask him?

*Corker*. No, my Lord.

L. C. J. What have you then to say for your self?

*Corker*. My Lord, this I have to say for my self, and I do protest it to be true, I never in my life did ever say Mass, or hear Confessions at *Somerset-house*.

L. C. J. What say you to Mr. *Passon's*?

*Corker*. No, nor at Mr. *Passon's*, nor ever was in the Company of that Man, nor ever saw him here in my life to my knowledge.

L. C. J. That may be.

*Corker*. I likewise protest, that I never said Mass in any publick place since I was borne.

L. C. J. It may be, you count not Mr. *Passon's* a publick place.

*Corker*. If it be a private place, then I should know who were in the Company, and who were admitted there.

L. C. J. No, you were not 2 or 3 years ago so nice, and cautious whom you admitted to see you in the Exercise of what you call your Religion; because the Execution of the Law was not so strict, as now adays it is. And therefore 'tis very probable, and may very well be, that you were at Mr. *Passon's* House, and yet not know all the Company.

*Corker*. But, I say, I never did say Mass there.

Mr. Justice Pemberton. Here are three Witnesses against you, and do you think your bare Word will be taken against their three Oaths?

Mr. Recorder. What say you to the *Savoy* Mr. *Corker*? and I ask you, because I would know whether you can speak Truth in any thing.

Mr. *Corker*. I say, as to the *Savoy*, I never received any one Confession there. And I do protest I never said Mass, nor heard Confession in *Somerſet-houſe*, nor at Mr. *Paſſon's* in *Dukeſ-ſtreets*. And, as for the *Savoy*, I humbly beg, that ſince the denial of it will not clear me, I may not be my own Accuſer.

L. C. J. Well, Gentlemen of the Jury, you hear what is proved againſt him by three Witneſſes, that they heard him ſay Maſs, and receive Confeſſions, and deliver the Sacrament. They tell you what Order he was of, and that they ſaw him do the Acts of a Prielt.

Mr. *Corker*. I appeal to all the World that ever came to *Somerſet-houſe*, Whether ever any one heard me ſay Maſs there?

L. C. J. Here is one hath.

Mr. *Serjeant Stroh*. We will Try *William Maſhall* next, who was charged upon the Jury as the others.

Mr. *Bedloe*. May it pleaſe your Lordſhip, and you Gentlemen of the Jury, *William Maſhall*, the Priſoner at the Bar, ſtands Indicted for High-Treaſon. The Offence is not for being a Prielt barely, but that he being born an Engliſhman, within the Kings Dominions, and having received Orders from *Rome*, did, againſt the Laws of the Kingdom, come and abide here.

Mr. *Serjeant Stroh*. Swear Dr. *Oates*, and Mr. *Bedloe* (which was done) Dr. *Oates*, pray ſtand up.

L. C. J. What can you ſay to Mr. *Maſhall's* being a Prielt?

Dr. *Oates*. I have heard him ſay Maſs in the *Savoy*, and I have ſeen him in that poſture that the Prielts are in when they give Abſolution.

L. C. J. Have you ſeen him in a Prielt's Habit ſay Maſs?

Dr. *Oates*. Yes, in his Habit, as a *Benedictine Monk*.

Mr. *Juſtice Jones*. Did you ever ſee him give the Sacrament?

Dr. *Oates*. Yes, and Conſecrate the Hoſt.

Mr. *Juſt. Jones*. Well, Have you any thing to aſk him?

*Maſhall*. When was this?

Dr. *Oates*. I have known him theſe three years to be a Prielt.

*Maſhall*. That is a year longer then you knew me at the Tryall.

Dr. *Oates*. It is a great while ſince that Tryal.

L. C. J. Ay, that is a good while ago.

*Maſhall*. But where Mr. *Oates*, and when?

Dr. *Oates*. At the *Savoy*.

*Maſhall*. When?

Dr. *Oates*. Within the compaſs of three years ſeveral times.

*Maſhall*. How does that afford me any occaſion of Defence? I can make no Plea, unleſs he aſcertains time.

Mr. Juſtice

Mr. *Just. Pemberton*. 'Tis good Evidence, without confining himself to precise time.

L. C. J. He says a Dozen times within that Compass.

*Marshall*. But why does he not name some particular time, for unless he name the time, How is it possible for us to disprove him?

L. C. J. He tells you many times in three years.

*Marshall*. But when?

L. C. J. Why within three years.

Mr. *Justice Dolben*. What if he could tell you when?

*Marshall*. Let him name the day, then we could disprove him; and let him name the day, and if I do not disprove him, I will be hang'd.

L. C. J. 'Tis an improper Question that you Ask.

Mr. *Just. Pemberton*. He is not bound to name the day.

Dr. *Oates*. Well, I will pitch upon a day now.

*Marshall*. When was it?

Dr. *Oates*. Several times last Summer was Twelve-Moneth.

*Marshall*. What before the Plot?

Dr. *Oates*. Several times in that Summer before the Plot was discovered; and several times the Winter before, when I came over from Spain.

*Marshall*. Did you hear me say Maf before you went over to Spain?

Dr. *Oates*. Yes I did.

Mr. *Justice Dolben*. Call another Witness.

Mr. *Belwood*. Mr. *Bedloe*.

Mr. *Serjeant Strode*. Pray will you tell what you know of Mr. *Marshall*.

Mr. *Bedloe*. I know a great deal of him.

L. C. J. What of his being a Priest?

Mr. *Bedloe*. I have seen him in his Habit, of a Benedictine Monk in the Savoy.

L. C. J. Have you heard him say Maf?

Mr. *Bedloe*. No, my Lord, I have not: But he hath been preparing to go to take Confessions.

L. C. J. Did he own himself to be a Priest?

Mr. *Bedloe*. He was in the Habit of a Priest, but I never saw him execute any part of the Office of a Priest.

Mr. *Justice Pemberton*. Did you hear him declare, that he hath been going at any time to take Confession?

Mr. *Bedloe*. The Monks have said, when he hath been gone, that he went to take Confessions.

L. C. J. Upon your Oath, Have you ever heard him own himself to be a Priest, or ever say, that he was going to take Confession.

Mr. *Bedloe*. No, my Lord, but I have seen him in a Monks Habit, and within half an hour he was in a Secular Habit: for when they went abroad they took Confessions in their Secular Habit.

L. C. J. How often have you seen him in a Monks Habit?

Mr. *Bedloe*



Mr. *Bedloe*. I do not know whether it were more then once. And I Asked then, Where is our Father going?

Mr. *Justice Pemberton*. And what said they to you?

Mr. *Bedloe*. He was going to take Confessions.

Mr. *Justice Dolben*. Have not you your self been Confessed by *Marshall*?

Mr. *Bedloe*. No, my Lord.

L. C. J. What say you to him, will you Ask him any Questions?

*Marshall*. I do not I think need to Ask this VVitnes any Questions.

L. C. J. That shall be observed for you, if it be to your advantage. If you have any thing to say for your self, pray speak it.

*Marshall*. If there be but one Witnes, VVhat need I make any Defence?

L. C. J. VVhat say you to Mr. *Oates* Testimony?

*Marshall*. As for Mr. *Oates*, if your Lordship will but promise, that it shall not prejudice me, as to the point of having but one VVitnes, I have much to say for my self: But, I think I need not trouble your Lordship with it.

Sir *John Keiling*. VVere not you here when *Marshall* was Tried for the Plot?

Mr. *Bedloe*. Yes.

Mr. *Justice Pemberton*. You must not Ask him any Questions about that.

*Marshall*. My Lord, I say, if your Lordship will but grant, that the VVitneses may have free Access, and go away safe——

Mr. *Bedloe*. I believe the Court, upon his Tryal, was satisfied that he was in Orders, received from the Church of *Rome*.

Sir *John Keiling*. Swear Mr. *Prance* (which was done) What did you hear him say at his last Tryal?

L. C. J. This is hard Evidence truly.

Mr. *Justice Jones*. If he would do it voluntarily of himself, he might, we did not Ask him the Question.

Mr. *Prance*. My Lord, I stood just by him when he stood at the Bar, and I heard him say this to the other Man Mr. *Corker*, *Though we are Priests, this does not reach us.*

L. C. J. But is this Good Evidence?

Mr. *Prance*. I did hear him say, He was a Priest.

Mr. *Justice Pemberton*. VVe did all hear him say so I believe.

Mr. *Justice Askyns*. I dare say none of the Court Asked him the Question.

*Marshall*. My Lord, I was not Asked, nor had any occasion, and certainly I should not pick an occasion to Condemn my self. If I did it, I did it without occasion. Besides, my Lord, I humbly conceive, that there must be proof against a man, or his Confession won't make him Guilty.

Mr. *Justice Pemberton*. I would not have you too sure of that.

*Marshall*. Certainly if a Man do Confess at another time, without proof against him that will not do.

Mr. *Justice Pemberton*. I believe the Jury will take your own Confession.

L. C. J. Don't



*L. C. J.* Don't be over Confident of that, for we have Memories too as well as you.

*Mr. Just. Pemberton.* You are not belid by *Mr. Prance*, I believe; *Mr. Marshall.*

*Mr. Just. Ellis.* If he have confes'd it, that is sure proof enough.

*Sir John Keiling.* Swear *Mr. Dugdale*, (which was done) You were at the last Tryal; Sir, I only ask of you, Can you remember any thing of this?

*Mr. Dugdale.* To the best of my remembrance, I heard him own that he was a Priest.

*Sir John Keiling.* Then say what you can for your self.

*Marshall.* My Lord, I have only one material Witness against me. They say that I said so; if I did say so, I must say it to the Court, and if it was to the Court, it must be upon some Question asked me.

*L. C. J.* You must not say so; I am afraid if you appeal to the Court, it will do you no good.

*Mr. Just. Dolben.* It is plain that you are so free of your discourse, that you might say things that were not pertinent.

*L. C. J.* 'Tis not proper for the Court to give Evidence; if we did, we should do you little Service in this matter.

*Marshall.* I do believe I shall receive all Justice from the Court. And I have experienced it so already. Now as to the present Testimony against me, I conceive that only *Mr. Oates* is a material Witness; no one else swears that they ever saw me Officiate or perform the Duty of a Priest. As for *Mr. Oates*, he says he heard me say Mass several times the last Summer before the Plot. And *Mr. Oates* did say he was present in June, July, and August. *Sir William Waller*, though he was pleased to forget other things, yet did remember that, and did Testifie that he saw me in June, July, and August. Now then I humbly conceive, if he heard me say Mass at any time in that Summer, it must be in one of those three Months. Was it in any one of them?

*Dr. Oates.* My Lord, I came over in April from Saint Omers, and I did, as I remember, hear him say Mass one time before I went again, and heard him say it several times after, which was about the middle of June, I think.

*Marshall.* Now I say, if this Honourable Court will but please to promise, that the Witnesses that come hither shall come and go safe, I believe there are Witnesses that may contradict *Dr. Oates*.

*L. C. J.* What can your Witnesses prove? you must not make bargains with the Court.

*Mr. Just. Pemberton.* Why should you suspect that your Witnesses should not go free?

*Marshall.* Because some have received great abuses.

*Mr. Just. Atkins.* It was so said, but not made out.

*Mr. Just. Pemberton.* There was only one person that came here, and affirmed so, but he did not prove it.

*Mr. Recorder.* And the Court did say that they should be punished that did it.

*L. C. J.* The witnesses none of them, that I know of, were abused.  
*Mr. Badloe.* It was only the Kings witnesses that have been abused.

*L. C. J.* What can your witnesses prove.

*Marshall.* He came over the 24th. of April, and I can prove that from the beginning of April to the end of July, I was not within threescore Miles of London.

*Dr. Oates.* As to his Officiating as a Priest, I cannot speak positively as to the time, but I think in last Summer was twelve Month.

*Mr. Just. Dolben.* He says, he thinks he did once in that time, but he is sure, that he did see you several times that Summer.

*Marshall.* But what part of the Summer?

*Dr. Oates.* From the time of my coming over again, to the time of the Discovery of the Plot.

*L. C. J.* When was it that you heard him first.

*Dr. Oates.* When I heard him first was in the year 1677. before I went into Spain: I went away in the Month of April, and I am sure he said Mass before I went into Spain; and when I came back again in the Winter, I came in November, and stay'd in Town about ten days, and then went to the Savoy and heard him say Mass.

*Marshall.* What November?

*Dr. Oates.* Before the Summer I came out of Flanders.

*L. C. J.* He says he went into Spain in April, (77.)

*Marshall.* And he heard me say Mass before he went over?

*Dr. Oates.* Yes.

*Marshall.* Pray look, my Lord, *Mr. Oates* will confess himself, he was but newly reconcil'd to the Church of Rome a little while before he went.

*Dr. Oates.* I was reconcil'd to the Church on Wednesday, and I went in April following.

*Marshall.* Where did you hear me say Mass then?

*Dr. Oates.* In the Savoy, at that time before I went into Spain.

*Marshall.* Do you pretend to have known the Savoy ever before your coming back again?

*Dr. Oates.* Yes, I do.

*Mr. Just. Pemberton.* He does Swear it.

*Marshall.* So he does, but he can't prove it. *Mr. Oates* came over in the Company, as he says, of *Mr. Thimbleby*, and *Mr. Hitchcock*, and by his means he did get to be commended to be received into the Order of the Benedictines, and he was then sent to *Mr. Pickering* in order to it; Now, my Lord, is it credible that *Mr. Oates* having no acquaintance with the Savoy before he had acquaintance with *Mr. Hitchcock*, which was when he came from Spain, should hear me say Mass before he went thither?

*Mr. Just. Pemberton.* All this is but a Story to the Court.

*L. C. J.* What a wild inference do you make from this unintelligible business?

*Marshall.* *Mr. Oates* says so himself.

*Mr. Just. Dolben.* We all know you said Mass so openly in the Savoy, that any People whatsoever might come, and you did not know who they were.

*L. C. J.* Though he was not one of your Order, yet he might know you.

*Marshall.* To my knowledge there was never three Masses said in the World at the Savoy.

*Mr. Just. Dolben.* The World knows the contrary.

*Marshall.* Let Mr. Oates be positive in any thing, and we will disprove him.

*Mr. Just. Pemberton.* He hath gone as near it as is necessary; he tells you, after his Reconciliation, before he went over into Spain.

*Marshall.* But I say, he could not be at the Savoy before he was acquainted there, and I can bring Witnesses to prove, that I was not then at the Savoy; but I pray, my Lord, will these Witnesses do me any good?

*L. C. J.* What will they prove?

*Marshall.* That all the Summer, from the beginning of April to the end of the Summer, I was in the Countrey, three score Miles from London.

*Dr. Oates.* I am not so positive in that, my Lord, but as near as I remember, before I went into Spain again. Your Lordships all know that I was not so positive as to any one time; but the Summer before the Plot broke out, I heard him say Mass several times in the Summer.

*L. C. J.* Now he is positive that he saw you say Mass in the Summer before the Plot was discovered. The substance of his Deposition was your saying Mass, the time is not material: he tells of a many times within that compass.

*Marshall.* How shall I disprove that?

*Mr. Recorder.* He hath given you one particular time from *Asb-wednesday*, when he was reconciled to Rome, till he went to Spain in April.

*Marshall.* If he names times, then am I able to disprove him: and he did name one, but when he saw me offer to prove by Witnesses, That I was not then in Town, he goes off from it.

*Mr. Just. Pemberton.* 'Tis impossible for Witnesses to be positive to a day, a week, or such a thing.

*Mr. Just. Ellis.* How is it possible to be so, unless it be a thing that he had taken such particular notice of, as to intend to Swear to it, and give Evidence about it afterwards. Now, I believe, Dr. Oates at that time had no thoughts of giving Evidence as to any such matter; but this he is positive in, That he did hear you say Mass at the Savoy.

*Marshall.* My Lord, if Mr. Oates had said he had seen me Officiate at *Somer-set-house*, or *Wild-house*, it might have been something like; but at the Savoy, it is known, That none are let in but Friends, nor could Mr. Oates come in, but upon a particular acquaintance.

*L. C. J.* How does that appear so?

*Marshall.* By those that live in the house.

*Mr. Just. Pemberton.* You must not spend the Courts time in this manner of discourse. If you have any Witnesses that you think in your self are material, the Court will suffer you to call them, and pray call them presently.

*Marshall.*



*Marshall.* Here is the House-keeper her self that will witness, That she never saw Mr. Oates there.

*L. C. J.* If the great Turk had come there with a pair of Beads and a Crucifix, you would have let him come in. But in the mean time, Mr. Oates, you have given him a pretty compass of time, whereby he hath an opportunity of disproving of what you say. And you give him one particular short time, but can you give any time afterwards in the Summer you speak of, within any Month, or two, or three. Because you say at several times.

*Dr. Oates.* I cannot be positive, but I will tell you one time was the Sunday before they held their Conspiracy, which was, I verily believe, the Sunday before the 21th of August.

*L. C. J.* Do you believe it was in August?

*Dr. Oates.* Yes, I do, and confine my self to the Month of August.

*Marshall.* Then call *Ellen Rigby*.

*Dr. Oates.* I was acquainted with Mr. *Pickering* soon after my being reconciled, and being acquainted with him, I went along with him several times to the *Savoy*.

*Mr. Just. Pemberton.* What do you talk of one *Hitchcock*, and I know not whom, he was acquainted with *Pickering* before.

*Marshall.* VVhen, my Lord?

*L. C. J.* Presently after he was reconciled.

*Marshall.* VVell, but you pretend now, that since you came over here, you were in the *Savoy*; Had you a Key to get in?

*L. C. J.* He was reconciled on *Ashwednesday*, he went in *April* to *Spain*.

*Marshall.* Here is *Ellen Rigby*.

*L. C. J.* VVell, what would you have with her?

*Marshall.* I ask, Did she ever see Mr. Oates in the Summer before last?

*Mr. Just. Pemberton.* Don't you lead your VVitness with such Questions.

*L. C. J.* Do you know Mr. Oates?

*Rigby.* I have seen him when I see him come to ask Charity of Mr. *Pickering*.

*L. C. J.* How often?

*Rigby.* Twice or Thrice.

*L. C. J.* VVhat time in the Summer?

*Rigby.* I cannot say, but I saw him in Summer was Twelve-month.

*Dr. Oates.* Why then did not this Woman, when she knew this Evidence that would lay a blemish upon me, come and give it for *Pickering* to have saved him?

*Mr. Just. Dolben.* Will you give me leave to ask this Woman this Question. Whether she ever heard you say *Mafs*?

*Marshall.* Ay, my Lord, with all my heart; and if she says she hath, I will be hang'd without any more ado.

*Mr. Just. Dolben.* Then you are sure your Profelytes will say any thing you would have them?

*Marshall.*

- Marshall.* I my self am a perfect stranger to the *Savoy* in a manner?
- Mr. Just. Pemberton.* Is he not acquainted with the *Savoy*?
- Rigby.* Yes, he was there one Month, when *Pickering* was taken.
- Marshall.* Pray ask her whether ever, before *Mr. Oates* went over, she saw him in the *Savoy*.
- L. C. J.* You shall have your Question asked, but do you think you can build upon that, if she did not see him, he did not see you. Did you ever see *Dr. Oates* there betwixt *March* and *April*, before he went over into *Spain*?
- Rigby.* No, there was no body in the house but *Mr. Pickering*.
- L. C. J.* Was there never *Mafs* said in the House?
- Rigby.* Yes, while her Majesties Servants were in the house.
- L. C. J.* But was there *Mafs* never said since in the house?
- Rigby.* Never since I came out of it, which was a Twelve-month ago.
- Mr. Just. Pemberton.* Was there not *Mafs* said in three or four years time there?
- Rigby.* Not in our house, I lived but in one house.
- Marshall.* I call her to know whether *Dr. Oates* was there? And my Lord, here is that which I insist upon, That none is let in there to hear *Mafs*, but those that have some particular acquaintance and intimacy in the house.
- L. C. J.* She only speaks to one particular part of the house. She can't say but *Mafs* was said in the other parts.
- Rigby.* There was no *Mafs* said there, that I know of.
- L. C. J.* Why, was there no *Mafs* said, but in that particular house you lived in?
- Rigby.* I can't say that.
- L. C. J.* But the Question is, whether ever you, *Mr. Oates*, saw him say *Mafs* in this womans house?
- Dr. Oates.* I do not know that ever I saw this woman in all my life, before the Tryal.
- Marshall.* He came there under a disguised name.
- L. C. J.* He tells you he went along with *Pickering*.
- Dr. Oates.* *Pickering* served the *Mafs*.
- L. C. J.* Well, call your Witnesses, if you have any other.
- Marshall.* I can prove that I was out of Town the whole Summer, from the beginning of *April* to the end of the Summer. But if *Mr. Oates* will not stand to any time, I cannot be able to disprove him. But then I'll only offer one or two things more.
- L. C. J.* When did you come to *London*, in *August*?
- Marshall.* I will tell you as near as I can to a day. I came in the middle of *Bartholomew Fair*, which begins the 24th of *August*.
- L. C. J.* So it was the latter end.
- Mr. Just. Pemberton.* Well, if you have any Witnesses, call them, and do not spend the Courts time in vain.
- Marshall.* My Lord, I have something very material, I think, to offer. The only material Witness that is now against me, was a Witness against me in my last Tryal; now I do conceive that I being found, Not Guilty at the last Tryal, that Witness ought to be look'd

upon as Perjured. And I appeal to the Court, whether it were so or no.

*Mr. Just. Atkins.* That's a false Collection, *Mr. Marshall.*

*L. C. J.* 'Tis a strange inference you make, Do you think, that every Witness is Perjured, because the Jury don't find according to what he says? He is not Perjured, for he may Swear true, and the Jury not believe him.

*Marshall.* I ground it my Lord, upon what my Lord Jones said to the Jury that Sate upon *Coleman*, who at their going out told them, Either they were to find him Guilty, or bring in two men Perjured. Thus it was his opinion, that the finding of the Jury contrary to the Evidence, did make them perjured; and there was none of the Court did oppose him.

*Mr. Just. Jones.* What then?

*Marshall.* And if this were the sense of the whole Court, That a man must either be found Guilty, or the Witnesses Perjured, that is my Case, and he is not to be believed.

*L. C. J.* See how unconsequently do you talk. The Court might say, That you must believe these men Perjured, if they Swear a positive thing, and you find it not; but if you make use of it thus, that therefore they are Perjured, 'tis false, for they are not so, till they be Convicted upon Record. And though the Jury do not believe them, yet they may Swear true.

*Marshall.* 'Tis true.

*L. C. J.* Then you make no inference from it.

*Marshall.* My Lord, I am before the same Court that I was tried by before, and before the self-same Judges, who know that upon my Tryal he was not believed, and therefore is perjured.

*Mr. Just. Pemberton.* You must consider, that sometimes the Jury will go against the direction of the Court; but if the Witness be not believed by them, that does not argue that he does not Swear truth, or is perjured. I tell you, My Brother Jones might say, You must find this man Guilty, or think these men Perjured; many times a Judge will say so, but the Jury often find against the direction of the Court; Shall these men be perjured then presently?

*Mr. Just. Jones.* There was two positive Witnesses, as positive as could be in the world, and nothing at all to contradict them.

*Mr. Recorder.* Will you give the Jury leave to believe you *Mr. Marshall*? for you your self said you were a Priest.

*Marshall.* Yes, if I said so. I humbly desire the Jury to take notice of it, that they are the self same Witnesses that brought such a positive Testimony the last time, which if the Jury had believed, they must of necessity have brought me in Guilty; I would not spend the time of the Court, but I would observe this, It was all Sworn positively, That I did consent to the Kings Death, and other things.

*L. C. J.* You had the better luck.

*Marshall.* Then they are not to be believed now.

*L. C. J.* This is to no purpose, neither is it to be suffered: For you break in contrary to all the Laws of Practice, if we suffer this as an Argument, That because an Evidence was not believed in one Case,



Cafe, therefore he is Perjured: And the Jury gave in a Verdict contrary to the Witnesses Testimony, that therefore he is Perjured in another Cafe.

*Marshall.* This does invalidate the Testimony sure of such a Witness.

*L. C. J.* You have said it often enough, come pray conclude.

*Mr. Just. Pemberton.* No, Mr. Marshall, you must not be suffered in these Harangues to impeach the Witnesses; if you have any thing material against Dr. Oates, or if you can shew any Record of his Conviction of Perjury, it may be something.

*Marshall.* My Lord, it is for my Life, and 'tis the second time that I plead for my Life, much beyond my expectation; and therefore I hope I may have the freedom to speak. And though I confess this Jury is not obliged to proceed according to the Verdict of the former Jury, yet this Jury, as well as that, is obliged to proceed according to the appearance of truth. And his being found false in his Testimony the last time, should make him of no Credit here.

*Mr. Just. Dolben.* It is not so, they are not to take notice of it; unless you bring them a Record of Conviction.

*Mr. Just. Pemberton.* He gave a good Evidence then no doubt of it, though they would not believe it.

*Mr. Just. Atkins.* Upon what grounds that Jury went, is unknown to us.

*Marshall.* Then, my Lord, another thing is this. The Law does except against all Witnesses who are strongly or rationally supposed to have a Spight or Malice against the Prisoner, much more where there is a manifest sign that he hath a Malice. Now I will endeavour to shew how it comes to my Cafe: Mr. Oates accused me last time of Treason, and that in the highest nature; if this had been true, he had shewed himself a good Subject, and me Disloyal. And the Jury not believing him, I was found the good Subject. Now he pursues his Malice.

*L. C. J.* You shall not go on in this manner, and make such notorious false inferences, that because it was not found according to his Testimony, therefore he is Perjured. The Jury did not believe it, might not he speak true for all that? Hath not many a Witness Sworn true, yet the Verdict gone against their Evidence? and therefore you don't mind, Ye are all guiddy-headed, if you once get a thing into your heads, you can't get it out again.

*Mr. Just. Atkins.* If the Jury did not believe it, a great many others did.

*L. C. J.* All you build upon is but a false Conclusion; because the Jury found you not Guilty, therefore they found him Perjured.

*Marshall.* My Lord,——

*Mr. Just. Pemberton.* Pray Sir, if you will speak any thing that is material and modest, the Court will admit you to it; but if you only go to throw dirt upon the Kings Witnesses, men of good Reputation, and men that have shewed themselves honest, and that have spoke truth all along, ne're a one of their Testimonies but what is confirmed by others, so that not one of them stands single, and for you to say they are ill men.

*Marshall.*

*Marshall.* My Lord, I do not say they are ill men, I speak of matter of Fact.

*L. C. J.* You conclude falsely, and if you did but mind it, you would never repeat it over and over again. That because the Jury did not beleive his Evidence, therefore he is Perjured. Do you suppose then that any other Jury should never believe him?

*Marshall.* My Lord, I reckon his Evidence is not so good, and if I am found Not Guilty, there must be malice in him to accuse me.

*L. C. J.* Look you Gentlemen, The single Question is, Whether he be a Romish Priest or no? it is proved by Mr. Oates that he hath several times heard him say Mass, that he hath seen him deliver the Sacrament, and seen him Consecrate the Host. He insisted upon it how often, Mr. Oates says, Ten or a Dozen times, in what time he cannot charge himself particularly with a Month or two; but at last he did tell him positively, because Marshall said, how is it possible I can make my defence to generals unless you fix sometime? therefore says he, I was Reconciled to the Church of Rome on Ash-Wednesday, and afterwards between that and April, when I went into Spain, I heard him say Mass, that was once. But I heard him say in the Summer several times. Being asked what part, he says, I cannot say exactly, but I think in the Month of August; if he had said any thing as to the particular time, between Ash-Wednesday and his going into Spain it had been something, but against that he makes no pretence, as to his saying Mass in the Savoy, that can contradict it. If he can still, he shall call his Witnesses that can prove he did not say Mass between the Ash-Wednesday, and the April he went into Spain. He does indeed say, that he was a great part of the Summer in the Countrey, in June, and July, to Bartholomew Fair, Threescore Miles off, but to that, Mr. Oates says it was sometime in August and so he might be in the Countrey till then, and yet say Mass after, he might come to Town the 6th, or 7th, or Eight and Twentieth, and he might be here in August. So you hear no Evidence that contradicts supposing it proved true, what he imagines his Witnesses can say. The last time that he charges him to have said it in the Summer, may be true according to his own word and Confession when he came to Town. Then there is Mr. Bedloe, he only tells you he saw him in a Priests habit, but he did not see him Execute the Office of a Priest, but he looked upon him as a Priest, called him Father; and that is all that he Charges him with, that is concurring Evidence, and backs Mr. Oates; but alone perhaps it would be very weak. But they set up here Prance, and he says directly, that at the Tryal, he did confess himself to be a Priest; and he seems to deny it, and would appeal to the Court; but his appealing to the Court would not help him in that Case. So I leave this to you upon this Evidence, if you believe Mr. Oates that Swears he saw him before he went into Spain, and after say Mass with the concurring Evidence of Mr. Bedloe that saw him in his Habit, and with the subsequent Evidence of those two more that do Swear that he did say so, you must find him Guilty. And a mans own  
Confession

*Confession is Evidence against himself. And if Mr. Marshall will recollect himself, he would not be too positive in that point. If all these particulars satisfy your Conscience, I say, that he is a Romish Priest, you must find him Guilty; if you are unsatisfied you must acquit him.*

*Cl. of Cr.* Set *William Russel* to the Bar. *William Russel alias Napper*, hold up thy hand: You that are Sworn, look upon the Prisoner, and hearken to his Cause, &c.

*Mr. Belwood.* May it please your Lordship, and you Gentlemen of the Jury, *William Russel alias Napper*, stands Indicted for High Treason. The Offence Charged in the Indictment is, That being born within the Kingdom of *England*, and having received Orders from the See of *Rome*, he did come and abide here. To this he hath pleaded, Not Guilty.

*Mr. Serj. Strobe.* Swear *Dr. Oates* and *Mr. Prance*. *Dr. Oates*, will you tell my Lord and the Jury, what you know of *Mr. Russels* being a Priest?

*Dr. Oates.* My Lord, this *Russel* went by the name of *Napper*, and is a *Franciscan* Fryer, and I heard him say Mass several times at *Wild-house*.

*L. C. J.* What in his Habit?

*Dr. Oates.* In Priests Habit.

*L. C. J.* When was this?

*Dr. Oates.* The last Summer before the Plot, I have heard him Twenty times sing Mass.

*Mr. Just. Jones.* Did you ever see him give the Sacrament?

*Russel.* Where, pray was this?

*Dr. Oates.* At *Wild-House*.

*Russel.* What is his Name?

*L. C. J.* *Oates*.

*Russel.* I do not know him I say, my Lord.

*L. C. J.* Did he do it publicly?

*Dr. Oates.* Yes, in the Chappel.

*Mr. Just. Jones.* Did he give the Sacrament?

*Dr. Oates.* I did receive the Sacrament from him.

*Russel.* Why, first of all, I say I do not know him.

*L. C. J.* It may be so, more know *Jack Pudding*, than *Jack Pudding* knows.

*Russel.* Well then if one Witness must stand, I have no more to say.

*L. C. J.* Will you ask him any Questions?

*Russel.* He says he heard me a Month ago.

*L. C. J.* No it was last Summer was twelve Month.

*Russel.* Then he must prove it.

*Capt. Richardson.* He does prove it, he Swears it.

*Russel.* Well, I can make it appear, last Summer was twelve Month I was in the Countrey.

*Dr. Oates.* And I heard him say Mass, *November 1677*. he was then one of the Chaplains of *Wild-House*.



*Russel.* Give me leave to recollect my Memory.

*Mr. Belwood.* Set up *Mr. Prance.* You hear the Question, Sir, Is the Prisoner at the Bar a Priest?

*Mr. Prance.* Yes, I have heard him say Mass twenty times in his Habit.

*L. C. J.* Did he give the Sacrament?

*Mr. Prance.* Yes, I saw him give the Sacrament to several, and he did hear Confessions; he had a great many People about him.

*Russel.* When was this?

*Mr. Prance.* Two or three years ago.

*Russel.* Where?

*Mr. Prance.* At the Spanish Embassadors, at *Wild-house.*

*Mr. Att. Gen.* My Lord, here is *Sir William Waller*, that took him with his Vestments, and all his Trinkets. (Who was sworn.)

*L. C. J.* Come, What say you, *Sir William*?

*Sir Will. Waller.* That Morning I took him, as soon as I came into the Room, I asked him his Name? He told me his Name was *Russel*; I asked him, If ever he went by any other Name? He deny'd it for some time, but looking amongst some of his Papers, I found some Letters, directed to him by the Name of *Napper*. And then he did confess his Name was *William Russel Napper*. Searching among his Clothes, I found some Religious Habits; I asked him, If they were his? and he confessed and owned them to be his.

*Russel.* It was in my custody; it was none of mine.

*L. C. J.* Why did you say so then?

*Russel.* I kept it for another.

*L. C. J.* But you told him it was your own: VVhat say you to that?

*Russel.* I do not remember that.

*Mr. Just. Dolben.* VVell, he swears it.

*L. C. J.* Here are two positive VVitneses against you, what say you to it? VVhat say you to his saying, He hath heard you say Mass twenty times?

*L. C. Baron.* VVhat say you to the saying Mass at the time *Dr. Oates* speaks of?

*Russel.* I believe he is mistaken, as to the time and year. I was entred into the House in --78.

*Mr. Justice Pemberton.* Then you think it was at another time?

*Russel.* He could not hear me at that time, for I was then in the Country.

*L. C. J.* Have you any thing to say? It shall be allow'd you, it was at another time, but it seems 'tis true. Look you, Gentlemen, you have a very plain business of it; here are two VVitneses that Swear they saw him give Absolution, deliver the Sacrament, and heard him say Mass, and one say twenty times. And *Sir William Waller*, who says, That he confessed the Priests Habit to be his own.

*Russel.*

*Russel.* Consider my Circumstances, and give me a little time; I have not had any time to get my Friends near me, or to prepare my self.

*L. C. J.* I do not see any good time would do you. I think the best use you can make of your time, is to repent.

*Dr. Oates.* My Lord, the Court here is pestred with *Papists*; here are a great many about here.

*L. C. J.* If they be VVitneses we can't keep them out.

*Mr. Bedloe.* Some of them may be VVitneses, but all are not; and if they be, they come to catch advantages.

*Mr. Just. Dolben.* I don't understand why they should be turned out.

*Mr. Just. Pemberton.* Let them alone: beat quiet.

*L. C. J.* No, no, they will revile us, That they had not an open and a fair Hearing: we won't have it said, that we do any thing in Hugger-mugger; what we do is done openly and honestly.

*Cl. Cr.* Set *Charles Parrish, alias Parry*, to the Bar. Hold up thy hand. You that are Sworn, &c.

*Mr. Belwood.* May it please your Lordship, and you Gentlemen of the Jury. The Offence for which the Prisoner at the Bar stands Indicted, is High Treason, the same Offence for which the rest have been Indicted—

*L. C. J.* Then call your VVitneses.

*Mr. Serj. Strode.* *Dr. Oates*, and *Mr. France*. (VWho were Sworn.)

*L. C. J.* VWhat can you say against the Prisoner, as to his being a Priest?

*Dr. Oates.* My Lord, he is a reputed Priest, and hath said Mass several times: I have heard him say Mass at *Wild-house*, not in the publick Chappel, but in another Room.

*L. C. J.* VWhere do you say?

*Dr. Oates.* Once at *Wild-house*.

*L. C. J.* VWhere else?

*Dr. Oates.* At *Mr. Paston's*.

*L. C. J.* VWhen was this, VVinter or Summer?

*Dr. Oates.* VWithin the compass of a Year, reckoning -77 and -78. It was of a Saturday one time, and twice at *Mr. Paston's*, and once or twice, I can't tell which, at the other place.

*L. C. J.* And in the Priests Habit?

*Dr. Oates.* Yes, in the Priests Habit.

*L. C. J.* And did you see him Consecrate the Host?

*Dr. Oates.* Yes.

*L. C. J.* And give the Sacrament?

*Dr. Oates.* Yes.

*Parry.*

*Parry.* My Lord, as to that he speaks of Seventy seven or Seven eight, what Month of Seventy eight, I desire to know ?

*Dr. Oates.* I cannot confine my self to a Month ; I knew him to be a Priest, but I was little acquainted with him, but he was a reputed Priest.

*Mr. Just. Jones.* But you are sure this is the man ?

*Dr. Oates.* Yes, this is the man.

*Parry.* Am I the man ? What is my Name ?

*Dr. Oates.* You went by the name of *Johnson*.

*L. C. J.* Did you never go by that name of *Johnson* ?

*Parry.* No, my Lord, but by this name of *Parry* : *Parry* is my name, and by that name I went, and never by any other name than *Parry*, whatever he says.

*L. C. J.* Why, by that same name you are indicted, and you are the man that he saw.

*Mr. Just. Pemberton.* Will you ask him ever a Question ?

*Parry.* I have askt him already what I would ask him.

*Sir John Keiling.* Then set up *Mr. Prance*.

*L. C. J.* What do you say as to *Mr. Parry* ?

*Mr. Prance.* My Lord, I know he is a Priest ; I have heard him say Mass at the *Venetian* Embassadors, and at *Mr. Pastons* too.

*L. C. J.* How often ?

*Mr. Prance.* Once at *Paston's*, and two or three times at the *Venetian* Embassadors.

*L. C. J.* And you saw him give the Sacrament ?

*Mr. Prance.* Yes.

*L. C. J.* In his Habit ?

*Mr. Prance.* Yes.

*Parry.* At what time ?

*Mr. Prance.* I believe it might be half a year before the Plot. And I know you by another Circumstance. You brought a Chalice to my House, and it was whole, and you broke it, and told me, I must not touch it till it was broke, and so you defaced it.

*L. C. J.* That was an holy Vessel, was it not ?

*Mr. Prance.* Yes, and he told me I must not touch it till it was broken in pieces.

*L. C. J.* If you had not been a Priest, he had been as holy as you, and he might have touch'd it as well as you.

*L. C. Baron.* His breaking was to defecrate it.

*Mr. Prance.* He bought some Oyl Boxes of me about that time.

*Parry.* I do not know this man,

*Mr. Prance.* You were several times with me.

*L. C. J.* Why have you forgot the Chalice you brought to his House ?

*Parry.* I have no reason to forget my self, for I never did any such thing : for I never brought nor sold to him any Chalice or any such thing, and besides, suppose I had —

*L. C. J.*



*L. C. J.* Nay, there is no great stress laid upon that, but to shew you, that he knows you, he did not mistake the man. The stress of the Evidence lies, that he heard you say *Mafs* at the *Venetian* Embassadors, and at *Passons*. And then *Dr. Oates* speaks of *Wildbouse*.

*Mr. Bedloe.* I had Order to send for two Witnesses out of *Monmouthshire*—

*L. C. J.* Here is proof enough.

*Mr. Justice Pemberton.* What have you to say for your self?

*Parry.* I have this to say, and can shew it evidently, that is, I have Witnesses to prove, that I never was at *Wildbouse* to Officiate in the year 77 and 78 before the Plot. And for this 6 or 7 Moneths that *Mr. Prance* does alleadge I was in *London*, I was in the Country.

*L. C. J.* When?

*Parry.* Six or Seven Moneths before the Plot.

*L. C. J.* He did not confine himself precisely to any Six or Seven Moneths.

*Parry.* My Lord, I desired him to fix upon a moneth.

*Mr. Justice Pemberton.* He cannot do it.

*L. C. J.* If he can, let him; We will Ask him the Question. When was it that you saw him do thus?

*Mr. Prance.* My Lord, I am not certain what time it was, but about two, or two years, and an half ago, I am not certain, 'tis impossible for me to remember it.

*Mr. Justice Pemberton.* You must take him in what he says, this he is sure of, he did hear you say *Mafs*, and give the Sacrament, but as to the time, he believes it to be about this time, but he is not positive, nor can be in it.

*Parry.* He only believes it now, because he knows I have Witnesses for that time. He hath Sworn it positively, it was six or seven moneths before the Plot, and I have Witnesses to produce, can prove, how long before the Plot I was in the Country.

*L. C. J.* Call your Witnesses.

*Parry.* Call *Lanscroon* and *Jacob*.

*L. C. J.* How long was it before the Plot, as near as you can, tell the time *Mr. Oates*?

*Dr. Oates.* I have heard so many Priests, that I cannot possible give an account of the day.

*Parry.* I desire to know of *Mr. Oates* who was Embassador at *Wildbouse* at that time when he says he heard me?

*Mr. Recorder.* Were you never at *Passon's*?

*Parry.* No.

*Mr. Recorder.* Nor at the *Venetian* Residents?

*Parry.* No.

*Mr. Recorder.* *Mr. Parry* was not, but *Mr. Johnson* was.

*Parry.* I know not *Mr. Johnson*, my name is *Parry*.

*Mr. Recorder.* I mean *Mr. Johnson*, alias *Parry*.

*L. C. J.* *Mr. Prance*, you are sure that is the man?

*Mr. Prance.* Yes; And I heard him confess himself to be a Priest.

*L. C. Baron.* And this is the man that brought the Chalice to you?

*L. C. J.* Why did you never go with a Chalice to this man, and break it?

*Parry.* My Lord, I never bought any thing of him, nor sold any thing to him, nor had any converse with him.

*Sir John Keeling.* I do never wonder at their denying any thing, I would feign know whether he would not deny the Sun shines now or no?

*Parry.* And then for the Private Room, What Room of the House was it?

*Prance.* I took him up in the middle of *Cheapside*, and therefore I must sure know him.

*Parry.* He did not know me, but only took me on suspicion at Random, because I was in the Company of a Roman Catholick.

*Then the Witness Lanscroon stood up.*

*L. C. J.* What would you have this man Asked?

*Parry.* About the year 77 and 78, wherein *Mr. Oates* alleadges he heard me, let them Answer to that, how long I was at *Windsor*? And whether I did not dwell constantly there?

*L. C. J.* Well, you hear the Question. How long was he at *Windsor*?

*Lanscroon.* From what time do you Ask?

*Mr. Justice Pemberton.* Nay, you must not be lead into an Answer. How long was he at *Windsor*?

*Lanscroon.* From *Christmas* 77, to *Alballantide* 78.

*Mr. Justice Ellys.* And was he never at *London* all that time?

*Lanscroon.* No.

*Mr. Justice Pemberton.* How can you tell that?

*Mr. Justice Ashgyns.* Was he alwayes in your sight all the time?

*Lanscroon.* Yes, he was there alwayes.

*Mr. Justice Ashgyns.* Were you there alwayes your self?

*Lanscroon.* Yes.

*L. C. J.* What are you?

*Lanscroon.* A Painter.

*L. C. J.* And was you and he alwayes together at that time?

*Lanscroon.* Yes.

*L. C. J.* What in a Room?

*Lanscroon.* Yes.

*L. C. J.* Can you affirm, that for a Twelve moneth together, you saw him every day?

*Lanscroon.* Yes.

*Mr. Recorder.* How many years ago do you speak of?

*Lanscroon.* From 77 to 78.

*Mr. Recorder.* I don't Ask you that, but how many years ago 'tis?

*L. C. J.* When came he down to *Windsor*?

*Lanscroon.*

*Lanscroon, Christmas (77.)*

*L. C. J.* The Testimony of *Mr. Oates* goes to *November*, and he speaks of *Christmas* following.

*Mr. Recorder.* How many years ago was it, I Ask ?

*Lanscroon.* A year ago last *Christmas*.

*Mr. Recorder.* That is 78 and 79.

*Mr. Justice Pemberton.* Your Witness is understood, *Mr. Parry*.

*Then stood up the other Witness Jacob.*

*L. C. J.* What say you about *Mr. Parry's* being at *Windsor* ?

*Jacob.* He was a Gentleman that came along with me in the Coach to *Windsor*.

*L. C. J.* When ?

*Jacob.* Before *Christmas* (77.)

*L. C. J.* How long before ?

*Jacob.* Ten days. He came there to take the Air for his health, he was not well.

*L. C. J.* How long staid he there ?

*Jacob.* He staid at *Windsor* till *Alhallantide* after, he staid there a year.

*L. C. J.* Did you see him there every day of that year ?

*Jacob.* Yes.

*L. C. J.* Why, what reason had you to see him every day ?

*Jacob.* He dined every day at our house.

*L. C. J.* Your house ? What house ?

*Jacob.* The Painters.

*Mr. Justice Dolben.* However, that is but from *Christmas*, and he speaks of *November* before.

*L. C. J.* Did he Dine there all that time ?

*Jacob.* Yes.

*L. C. J.* Did he never keep a Fast in all that time ?

*Jacob.* No.

*L. C. J.* Did he dine a Wednesdays and Fridays ?

*Jacob.* Yes.

*L. C. J.* Did he dine there every Friday constantly ?

*Jacob.* Yes.

*L. C. J.* There was one Good Friday in that time.

*Dr. Oates.* Pray Ask this Witness if he never heard him say *Masie* ?

*Mr. Justice Dolben.* Then he must be Sworn, and may be he will deny it.

*L. C. J.* Did he Dine of Ashwednesday, and Good Friday ?

*Jacob.* Yes, my Lord.

*L. C. J.* So, he sayes you eat of Good-Friday and Ashwednesday, the Pope shall know it.

*Mr. Recorder.* What say you ? Did he eat Flesh upon those days ?

*Jacob.* Yes, he did.

*L. C. J.* You can tell what he did eat, can you ?

*Mr. Recorder.* Did he eat Beef or Mutton ?

*Mr. Justice Dolben.* Go, you talk like an idle Boy.

*L. C. J.* He tells you, that you eat meat too, that is more:

*Parry.* My Lord, we eat Fish, and such things all Catholicks do.

*Mr. Recorder.* Ay,



*Mr. Record.* Ay the Priests do, but their Pupils do not, they will not allow it to them.

*L. C. J.* Well, have you done, have you any more witnesses?

*Parry.* My Lord, I would ask *Mr. Oats*, and desire he would answer me to it, what he did depose against me before my Lord of *Shaftsbury*, and the Committee of Lords, concerning one *Mr. Collins*, that I heard his Confession at my Lord Ambassadors, now I have it to shew, that I did not Officiate there, nor frequent the House.

*L. C. J.* Who is it that will prove you did not come to the house?

*Parry.* The Venetian Ambassadors Servants.

*L. C. J.* I do not understand what you mean.

*Parry.* I am to ask of *Mr. Oats*, and I desire he should answer to it, What he did depose before my Lord *Shaftsbury* and the Committee of Lords, touching *Mr. Collins*.

*L. C. J.* He cannot remember it may be.

*Mr. J. Pemb.* You must not ask such questions as these are, it does not refer to this matter.

*Parry.* He did give in that I heard *Mr. Collins's* Confession, I ask why he does not give it in now?

*L. C. J.* That is a forreign matter, what have we to do with it now?

*Mr. J. Pemb.* If you will prove any thing against him, you may, but you may not ask such questions as that.

*Parry.* I have proved that I was in 1677, and 1678. in the Countrey.

*Mr. J. Pemb.* They tell us of Ten days before *Christmas*, and *Mr. Oates* speaks of *November*.

*L. C. J.* Look you Gentlemen of the Jury, here are two witnesses against him, *Mr. Oates* and *Mr. Prance*.

*Parry.* My Lord, I have one thing I desire to be taken notice of, that is, this Letter of the Ambassadors, who upon the examination of all his Family does testify and declare, that I did never Officiate in any respect in his Family.

*L. C. J.* It cannot be read.

*Mr. J. Pemb.* It is not any Evidence.

*Parry.* How shall I clear my self, if the testimony of the Ambassador, and his whole Family be not admitted?

*Mr. J. Atkins.* 'Tis a hard thing for you to clear your self.

*L. C. J.* Why don't you bring them hither as your Witnesses?

*Mr. Record.* Where is my Lord Ambassador, why does not he come hither?

*Parry.* He hath left the Kingdom.

*Mr. Record.* Then you may boldly say any thing of him, and we can't disprove you.

*L. C. J.* Is all his Family gone with him?

*Parry.* There is but one remaining, I think he's here.

*L. C. J.* Call him.

*Parry.* Monsieur *Rivier*. (who appeared and stood up)

*L. C. J.* What do you ask him?

*Parry.* Do you know this Hand, Sir?

*L. C. J.* It must not be read if he do.

*Parry.* He is one of the Servants to my Lord *Egmont*, and he lived in the House, and he knows——

*M. J. Pemb.*

*Mr. J. Pemb.* Ask him any question, but don't tell him what he knows.

*L. C. J.* Why don't you ask him some questions? why, you have not Catechisms in your Church, you don't know how to ask questions.

*Parry.* Ask him whether he ever heard me say Mass at my Lord Ambassadors House?

*L. C. J.* It's to no purpose if he did not, here are some have.

*Parry.* Then my Lord, he knows that there was a strict examination at *Wild-house* by my Lords Orders, whether I did frequent the house, and it was reported by them all I did not, and they must know if ever I did officiate there, for there is none admitted to say Mass there, but by Order.

*Mr. J. Pemb.* Look you Sir, do you know that *Mr. Parry* ever said Mass at *Wild-house*?

*Rivier.* No my Lord, I do not know it.

*Mr. J. Pemb.* It was in a private Room, *Dr. Oates* says.

*Rivier.* I never saw him there.

*Mr. J. Pemb.* If you ask an hundred here, they would say the same thing.

*L. C. J.* Come, when matters are plain 'tis in vain to contend; here is the business Gentlemen, here are *Mr. Oates* and *Mr. Prance*, two witnesses against *Mr. Parry*, *Mr. Oates* says, he hath heard him say Mass one time at one place, and twice or thrice at another. *Mr. Prance* hath heard him often, and *Mr. Prance* does tell you plainly, that he cannot err, that he is not mistaken in the man, for he came to his house with a Chalice, and broke it there, and he knew him so well, that meeting him by chance, he took him up in the streets; so if you believe them, they swear it positively, and you must find it so.

*Then the Lord Chief Justice went away.*

*Cl. of Cr.* Set *Henry Starkey* to the Bar. Hold up thy hand, &c.

*Mr. Belwood.* May it please your Lordship, and you Gentlemen of the Jury. *Henry Starkey* stands Indicted for the like offence with the other prisoners; that he having received Orders from the See of *Rome*, came into *England*, and this is High Treason; to this he hath pleaded Not Guilty, we will prove it upon him. Sweat Doctor *Oates* and *Mr. Prance*. (which was done.)

*Mr. Serj. Strode.* Pray Sir will you tell my Lord and the Gentlemen of the Jury, what you do know of this *Starkey* being a Priest?

*Dr. Oates.* My Lord, *Mr. Starkey* is a Priest, and I once heard him say Mass at *Mr. Paston's*.

*L. C. Baron.* When was that? How long was it agoe?

*Dr. Oates.* It is about three years agoe.

*L. C. Baron.* Did he give the Sacrament then, or at any other time?

*Dr. Oates.* None received but himself.

*Mr. Belwood.* Was he in Priests Habit?

*Dr. Oates.* Yes.

*L. C. Bar.* Did he receive the Sacrament, and consecrate the Host?

*Dr. Oates.* Yes, in both kinds.

*L. C. Baron.* Will you ask him any questions?

*Starkey.* He tells me of the Priests Habits, What are they Sir?

*Dr. Oates.* Under it he was in a Secular Habit, but first he had a thing about his Neck, a piece of Linnen, I have forgot what they

call it, and over that he had a Surplice girt about him, and a Stole about his Neck over that.

*Starkey.* *Dr. Oates*, if you be so, for I do not know you, a Priests Habit is a Caslock and a Cloak, the Ornaments of a Priest are not a Surplice, but an ———

*Mr. J. Pemb.* You are well skill'd in it I see.

*Starkey.* And how did you know that I said Mass? Did you know that I took Orders? for if I took no Orders, it was no Mass; for it is the Priest makes the Mass, and not the Mass the Priest; and then if I was no Priest, it could be no Mass.

*Mr. J. Pemb.* That is a pretty Argument indeed; Do any but Priests say Mass?

*Starkey.* I can bring instance of a Gentleman in this Town, a private Lay-man, who did say Mass about this Town, and he was a Protestant, and at last he stole the Chalice.

*Mr. J. Pemb.* He did well, did he not?

*L. C. B.* 'Tis a great Evidence this arguing of yours, if he did not swear it, that you are a Priest.

*Starkey.* I wonder that this Gentleman should so well remember me, I don't know him.

*Mr. J. Pemb.* Do you think you know every one that hath seen you at Mass?

*Sir John Keiling.* Set up *Mr. Prance*. What say you Sir to this?

*Mr. Prance.* My Lord, I heard him say Mass at my Lady *Somersets*, and at *Mr. Pastons*.

*Starkey.* As I hope for mercy from Almighty God, I was never there in all my life.

*Mr. Prance.* More than that, I heard him confess himself a Priest to one *Mr. Duncomb*.

*Starkey.* What is that he says?

*Mr. Prance.* Did you know one *Mr. Duncomb* that is dead?

*Starkey.* Yes, he was a Schoolmaster.

*Mr. Prance.* Well, I heard you say Mass at his House.

*Starkey.* I'll tell you what then, it was with a Pot of Ale, and at 3 or 4 a clock in the afternoon, for that was the only time I was there.

*Dr. Oates.* I have heard him say, he said Mass in the Kings Army.

*Mr. J. Pemb.* He tells you, he heard you say, that you did often in the Kings Army say Mass.

*Starkey.* You never heard me say so in your life, for I never did. But pray my Lord give me leave to speak: I appeared for the King, when he had but 500 men in appearance for him. I am but a younger Brother, an Esquires 2<sup>d</sup> Brother; I spent in the King's service above 5000 *l.* which I got my self, and bled for it before I had it. I spent my Annuity of Seventy score pound a year for the King, I lost my Leg for him, and spent my Estate to that Degree, that that day when I receiv'd the sentence of Banishment, I had but Two half Crowns left.

*L. C. Bar.* *Mr. Starkey*, You may urge this to the King, for his Mercy and Clemency; 'tis nothing to the point here before the Jury to be Tryed. Whatsoever you have merited by your services, you must apply your self to the King for his mercy, it is nothing here.

*Starkey.* Pray my Lord, give me leave to add one thing more, I did



did discover to the King a Plot designed against His Person, State, and Government, and I suffer to this day for it.

*L. C. Bar.* You may be a Priest for all that.

*Starkey.* But my Lord, by the Civil Law it is a conclusion, that although a man be a Traitor, and in the same Plot, he is to be indemnified for discovering the Conspiracy against his Prince, much more for discovering another.

*Mr. J. Pemb.* We have nothing to do with that here, but whether you are a Priest or not.

*Starkey.* That I must leave to the proof.

*L. C. Bar.* Well then, I'll tell you Gentlemen, this person is Indicted for being a Priest and coming into *England*. For the point of his being a Priest you have heard two witnesses depose; and they both tell you, that they have heard him say Mass, as great an evidence of it as can be, for none say Mass but Priests. *Dr. Oates* tells you at *Mr. Paston's*. *Mr. Prance* says at *Mr. Paston's*, at my Lady *Somerfets*, and one *Mr. Duncombs*. If you believe this, you must find him guilty.

*Mr. J. Atkins.* And they speak too, to his receiving the Sacraments in both kinds.

*Starkey.* If I was there, sure there was some body else besides my self.

*Cl. of Cu.* Set *Alexan. Lumsden* to the Bar. Hold up thy Hand, &c. Your Charge is to enquire of him as of your first Prisoner, and hear your Evidence.

*Mr. Belwood.* May it please your Lordship, and you Gentlemen of the Jury, *Alexander Lumsden* the prisoner at the Bar, stands Indicted for High Treason, for that he being a Priest, and receiving Orders from *Rome*, did come here into *England*, and abide contrary to the Statute.

*Sir John Keeling.* Swear *Dr. Oates*, *Mr. Dugdale*, and *Mr. Prance*, (which was done)

*L. C. Bar.* Come *Dr. Oates*, What say you to this man?

*Dr. Oates.* I heard him say Mass, he is a Dominican Fryer as I remember. I heard him say Mass 20 times at *Wild-house*.

*L. C. Bar.* And Consecrate the Host?

*Dr. Oates.* Yes, and I reciv'd the Sacrament from him.

*L. C. Bar.* And see him rake Confession?

*Dr. Oates.* Yes

*Mr. J. Pemb.* Will you ask him any questions?

*Lumsden.* What time was this, if it please you Sir?

*Dr. Oates.* That Summer that was before the Plot broke out: *Mr. Lumsden* knows me well enough.

*L. C. Bar.* Do you not know him?

*Lumsden.* Truly I do not know that ever I saw him, or conversed with him in my life.

*L. C. Bar.* What say you *Mr. Dugdale*?

*Dugdale.* My Lord, I was at *Whitehal* that day *Mr. Lumsden* was taken; and by the importunity of some friends I did goe to him, but I did not know him, but by discourse he did confess himself a Priest; I asked him if he was a Franciscan, he said he was a Dominican.

*Dr. Oats.* He is Procurator-General of the Kingdom of *Scotland*.

*Mr. Record.* They have such a parcel of people, and such names for them.

Mr.

*Mr. Serj. Strodes* Mr. Prance, what do you know of *Lumsden's* being a Priest?

*Mr. Prance.* I know he is a Priest, and have heard him say Mass several times at *Wild-House*.

*L. C. Bar.* Was he there in the Habit?

*Mr. Prance.* Yes, and consecrated the Host.

*L. C. Baron.* How long since?

*Mr. Prance.* Two years since, I heard him 20 times.

*L. C. Bar.* Do you know what Countreyman he is?

*Mr. Prance.* An Irish man I think.

*Dr. Oates.* No, he is a Scotchman, he will not deny it.

*L. C. Baron.* What Countreyman are you?

*Lumsden.* A Scotchman.

*L. C. Baron.* Of what part of Scotland?

*Lumsden.* Aberdeen.

*L. C. Bar.* Were you born there?

*Lumsden.* Yes.

*L. C. Baron.* You have no more to say, have you?

*Lumsden.* My Lord, I am not here I think, to be my own Accuser, I humbly conceive so, and whatsoever is against me, must be proved, not simply asserted, They ought to give Proofs and Reasons; but so it is, it is but a simple assertion what they say. I desire they may prove it.

*L. C. Bar.* No, they need not; it is sufficient if they prove it by such Circumstances, that the Jury are satisfied and convinced that it is true. But it is not to be looked for, that no proof should be given against the Priest, but by them that saw him receive Orders.

*Mr. J. Atkins.* 'Tis impossible almost to prove that.

*L. C. Bar.* But if they prove the Circumstances, that you have executed the Office of a Priest by saying Mass, which none does but a Priest, 'tis enough to guide them in their Verdict.

*Mr. J. Ellis.* And they have proved that which is next to a positive Assertion.

*L. C. Bar.* That need not be.

*Mr. J. Ellis.* But let us not lessen our proof neither.

*Mr. J. Pemb.* You must consider that the proof is certain, for they have sworn an assertive, positive thing, which thing is enough to a Jury to prove you a Priest, because none others but Priests may do such things in your Church as you have done. Therefore it is a good Argument and Evidence, to conclude you a Priest, from this Evidence that hath been given.

*Dr. Oates.* I have heard him own himself a Priest 20 times.

*Lumsden.* The exercise of the Priestly Function is but a penalty of 200 Marks.

*L. C. Bar.* Ay, that is, if the King will go no higher. But you are prosecuted upon another Law.

*Mr. J. Ellis.* 'Tis Evidence, and a great Evidence, that which hath been given, for we must go according to the nature of the thing. 'Tis impossible the Act of Parliament should be put in execution, if they must prove they received Orders from the See of Rome. But when they have proved those things done by any man, which none ought to do but a Priest; it hath been in all times allowed to be a special Evidence.

*Mr.*

*Mr. J. Pemb.* 'Tis a plain and sufficient Evidence.

*Mr. J. Ellis.* But if there were any need of it, and you would have any more, he hath confessed upon the question asked him, whether he was a Franciscan, no, he was a Dominican.

*L. C. Bar.* Have you done? Then Gentlemen of the Jury, you must not at this time of the day be insnared by that Argument, that there must be a positive proof of this Reception of Orders from the Church of Rome, because it hath been all along accounted, and is an undoubted proof for your satisfaction, if it appear he hath exercised the Offices of the Function; those Offices that are not done but by Priests. Now this hath been proved by two witnesses, and by the confession of the Priest himself to *Dr. Oates* and *Mr. Dugdale*. So I must leave it upon the point of Fact to you, whether it be not sufficient proof. But this Case will differ from all the rest, and the Court is very tender in the case of Life, that it should be without all question what is determined; therefore as to your enquiry for him, it must go only whether he be a Priest or no, for the others, you must consider them as Englishmen, and enquire of them as such; he is a Scotchman, as he says, and they say so too. Now then there are some words in this Statute, whereupon the Court hath conceived a doubt, whether his Case comes within them, which are the words about the Kings Dominions, which now are far more enlarged than were those of the Queen when the Statute was made: If then you find him a Priest, you must find the other matter specially.

*Mr. J. Ellis.* Look you Gentlemen, we are to be of Counsel for the Prisoner, and it being matter of Law, we shall take time to advise upon it before we give our opinion in it; but for the matter of Fact, I doubt not but you will find that he is a Priest; and then the other matters, that he was born at *Aberdeen* in *Scotland*; and the other matters you may find specially, there needs no more.

*Mr. Record.* Swear an Officer to keep the Jury.

*Who after the recess of a quarter of an hour, returned into the Court, and having answered to their Names, and appointed their Foreman to give in their Verdict, he delivered it thus.*

*Cl. of Cr.* *Lionel Anderson* alias *Munson*, hold up thy hand, look upon the Prisoner, how say you, is he guilty of the High Treason, whereof he stands indicted, or not Guilty?

*Foreman.* Guilty.

*Cl. of Cr.* *James Corke*, hold up thy hand. How say you, is he guilty, &c.

*Foreman.* Guilty.

*Cl. of Cr.* Is *William Marshal* guilty, &c.

*Foreman.* Guilty.

*Cl. of Cr.* Is *William Ruffel* alias *Napper* guilty, &c.

*Foreman.* Guilty.

*Cl. of Cr.* Is *Charles Parry* guilty, &c.

*Foreman.* Guilty.

*Cl. of Cr.* Is *Henry Starkey* guilty, &c.

*Foreman.* Guilty.

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*Cl. of Cr.*



*Cl. of Crown.* *Alexander Lumsden*, hold up thy hand. Look upon the Prisoner. How say you, Is he Guilty of the High-Treason whereof he stands Indicted, or Not Guilty?

*Foreman.* We find he is Guilty of being a Priest, and born at *Abberdeen* in *Scotland*.

*Mr. Justice Ellys.* Read the Notes to them.

*Cl. of Crown.* You find that *Alexander Lumsden* is a Scotchman, of 58 years of age, born at *Abberdeen* in the Kingdom of *Scotland*, being then under the Dominions of King *Charles* the First; and now under the Dominions of our present Sovereign, and in the Reign of the said King *Charles* the First; and that at the time in the Indictment mentioned, he was a Priest in Holy Orders, by Authority derived from the See of *Rome*, *prout* in the Indictment. And that he came and was remaining in *England*, *prout* in the Indictment. But whether upon the whole matter he be Guilty of High-Treason within this Law or not, you do not know, and crave the Opinion of the Court.

*Foreman.* Yes.

*Cl. of Crown.* Then hearken to your Verdict, as the Court hath Recorded it; You say, *Ye*.

*Mr. Recorder.* Call for the Executioner.

Then the Judges went off from the Bench, and the Court proceeded to Judgment.

*Cl. of Crown.* Set *Lionel Anderson*, alias *Munson* to the Bar. *Lionel Anderson*, alias *Munson*, Thou standest Convicted of High-Treason. What canst thou say for thy self, why Judgment should not pass upon thee to Die according to the Law?

*Anderson.* I can say this, That I would have gone out of *England*, but the King kept me here, telling me, He had need of my Service; and, I had a Protection from the Council-Board. The Bishop of *London*, when I was taken first, sent a Letter to Sir *Clement Armer*, that neither I, nor my Books, should be medled with; that I had written for the King and the Government, for which I was Excommunicated at *Rome*. And when I was taken, and in Custody of some of the Horse-Guard, the Duke of *Monmouth* sent to have me freed again. I beg'd of the King, that I might go; said I, I wont expose the King to the worst of Rebels: but he told me, That I should stay in *England*; and Mr. *Peter Welsh* and I had Orders from the Council, he one, and I another, to stay.

*Mr. Recorder.* For that matter you may be assured, I promise it you faithfully, and publickly, that I will acquaint the King with what you say.

*Anderson.* I thank you Sir.

*Mr. Recorder.* For this Court hath nothing to do with that, the King is the proper Judge of that matter, to determine his own pleasure, as he thinks fit: Tye him up.

*Anderson.* Sir, I had no notice of my Tryal, but this morning. I sent to my Lord *Bridgewater*, to know when I should be Tryed, he told me, I should have Ten dayes notice of it. Now I have Witnesses to disprove Mr. *Prance*'s Testimony: for Mr. *Osaw*, I own

he hath heard me say *Mas*; but for *Mr. Bedloes* Testimony, as I hope to see the face of Almighty God, I know him not. When I was taken, said he to me, *Mr. Anderson*, Let me see your Protection, and I shewed it him; You have two Names, said he, I do not know whether it be you or no. And then besides, these are not legal Witnesses.

*Mr. Recorder*. Nay, that must not be allowed you to say. You have been fairly heard, and tryed. They were upon their Oaths, and the Jury, Twelve Men, upon their Oaths, without any Exception made to them; they have Convicted you; therefore this is to Calumniate the Proceedings of the Court.

*Anderson*. I tell you this more; they are not the Kings Evidence properly, for they Swear for themselves, upon the accompt of Benefit, if any Priest be Convicted, they are to have so much Money.

*Mr. Recorder*. The Court heard the Evidence that was given, and if you will have it of the Court, the Court does really believe them, and so did the Jury too.

*Anderson*. I am satisfy'd.

*Mr. Recorder*. Tye him up then.

*Cl. of Crown*. *James Coker*, hold up thy Hand. You stand Convicted of High-Treason, What can you say for your self, &c.

*Coker*. Nothing, but that I refer my self to God my Just Judge and Saviour.

*Mr. Recorder*. Tye him up.

*Cl. of Crown*. *William Marshall*, hold up thy hand, thou art in the same Condition, What say'st thou for thy self?

*Marshall*. I have very little more to say, then what I have said already. I thought the Law had not allowed any Man to have been Condemned upon the Testimony of one Witness, but required two. Now there was but one positive Witness against me, the rest only said, I had confessed my self to be a Priest. Two of them did Swear, they heard me confess it at my other Tryal: If it had been at this Tryal, it had been another thing, and there had been some validity in the proof; but, to say, they heard me Confess it at another time, I humbly conceive, according to the Law, bears no force. I have this further to add, His Majesty, some years ago, put forth a Declaration under the Broad-Seal, for a Toleration of Religion, and Liberty of Conscience, whereby the Roman Catholicks had the use of their Religion in their private Houses. Now, I have been informed, that according to Law, whatsoever is put forth under the Broad-Seal, must be recalled by something under the Broad-Seal, or it remains in force, which was never done as to this Declaration, and then I lye under the Protection of that Declaration.

*Mr. Recorder*. As for the first part, 'tis plain, to the satisfaction of every body, that there hath been two Sufficient Witnesses, upon whose Testimony you are Convicted. For whether you were asked the Question or not, yet if you will say you are a Priest, that Confession of yours is Evidence against you, though you might possibly say so without being Asked the Question.

*Marshall*. Is it credible I should do so?

*Mr. Recorder*. Yes, the Jury believed it so.

*Dr. Cates*. One of the Jury stood by and heard the Words.

*Mr. Recorder*. And

*Mr. Recorder.* And now, because I will put it out of all doubt, 'tis not the business, nor the Duty of the Court to give any Evidence of any Fact that they know of their own knowledge, unless they will be Sworn for that purpose: for though they do know it in their own private Consciences to be true, yet they are obliged to conceal their own knowledge, unless they will be Sworn as Witnesses. But now you are Convicted, I must take the liberty to tell you, that at your last Tryal you did own your self to be a Priest. And I must put you in mind further of something which you may very well remember, when I detained you after your Acquittal, and Recommitted you when Sir *George Wakeman* was discharged; I did then tell you, you having owned your selves to be Priests, I was bound to take notice of that Confession of yours, and therefore obliged to detain you. Such a Token as that is, may perhaps bring it to your Memory: but as it was hinted to you before, you are a Voluminous Talker, and abundance of things may drop out of your Mouth, that you don't consider before they are past.

*Marshall.* 'Tis for my life, and therefore I may be permitted to speak sure.

*Mr. Recorder.* That is as to the first point. And then as to the Kings Declaration, which was the other matter you insisted upon, I presume it does not stick with any body that knows the matter; but least it should, I would say this to it. 'Tis very well known in the first place ( I do not go now to determine the Law upon it, because you know what Opinions and Judgment it received afterwards ) yet this I will adventure to say, That it was never the intention of that Declaration that ever Priests should come and reside here, but it was only intended for tender Consciences, as the very Letter of the Declaration it self does shew, not to Countenance Priests and Jesuits, that have cast off all their Allegiance to the King, and endeavour both to destroy Him and His Government.

*Marshall.* Pray Sir, Will you give me leave to speak as to that. If so be the use of their Religion were permitted to Roman Catholics, that Religion not being to be practised without Priests, it is to be supposed, that the Priests are permitted.

*Mr. Recorder.* But if a Man were to Argue with you now, in your own way, Pray are there not Priests in *England*, besides those Priests that were born here? You know, of your own Acquaintance, there are several Roman Catholick Priests, not Englishmen born, that are constantly here, who can perform the Offices.

*Marshall.* Nay, I don't know that: But this I know, if they be not born in *England*, or have lived in *England*, so as to know the Tongue, Roman Catholics will be little the better for them.

*Mr. Recorder.* Nay, I don't say much the better, but much the worse for their coming at them. And in case they would only use the English truth, I presume they would not have so many Profelytes, but you Gull them with stuff they understand not.

*Marshall.* Pray Sir give me leave a little, I have one word more. For all matters of Treason, and Treacherous Conspiracy, I was freed before in this Court; now I would observe, what the best  
Lawyers



Lawyers that ever were in *England* have observed for me, That there is no Crime in Priesthood it self: for my Lord *Coke* in his Fifth Report 39. leaf, commenting largely upon the Statute of the twenty seventh of *Eliz.* and enlarging upon the sense and meaning of that Statute, and calling to mind, who the men were that were formerly Executed by force of that Statute, and why, concludes thus. Hence it appears, that no man yet hath or can be Executed for his Function of Priesthood, but because there was annexed to the Priesthood treacherous Designs and treacherous Attempts. And the same Lawyer in the 3d. Institutes, 22th. leaf, says, That in this Statute of the 27th. of *Elizabeth*, 'twas very wisely and justly done by the Statute-Makers, to provide that the Judges should proceed in their Judgments upon that matter, only according to what is expressed and specified in that Statute. And those words were a Sanctuary to the Judges, and put in to prevent the shedding of guiltless blood. Now if so be that so great a Lawyer, in a discourse about Priesthood and Treachery, does thence conclude, That Priesthood as Priesthood is no Crime, nor no Function belonging to it hath any Crime in it, well may I conclude so too. And indeed if it had, then a great part of the World would be Traitors, nay, it would bring in Christ himself who was a Priest, to be a Traytor too. Therefore Priesthood as Priesthood hath no Treason essentially linkt to it. And when he says, that they must proceed according to what is specified, he does in the forementioned place shew, that it was not specified at all, that any that were Executed, were for Priesthood Executed. And I am accused of nothing else in the World, but bare Priesthood as Priesthood, without any Design or Treachery joyned to it. And if according to Law Priesthood be not liable to Condemnation, then I am not to be Condemned.

*Mr. Recorder.* Now you have been heard.

*Marshall.* Yes, Sir, and I thank you for it.

*Mr. Recorder.* This long Speech of yours will signifie but little, when you consider the Act of Parliament, upon which you are Indicted, 'tis true, set that Act of Parliament out of the Case, and then to be a Priest is not High-Treason; nay, in case a man be born out of the Kings Dominions, and be a Priest, and remain here, that is not High-Treason within this Statute, because Priesthood it self does not make the Crime; (God forbid any one should affirm it) but when all that is granted, when an Act of Parliament hath taken particularly notice of the great mischiefs and inconveniencies that have attended the Government, and the continual danger that the Supream head hath been in, by having Persons which were born within the Kings Dominions, (as you were) to wave their Allegiance, and to acknowledge a Supremacy in any Foreign Prince or Prelate, as you all do, when you take Orders from the *See of Rome*; the Wisdom of the Nation hath thought reasonable that such should be adjudged Traitors. And this Act of Parliament upon which you stand Convicted, does plainly say, If any one born within the Kings Dominions will take Orders from the *See of Rome*, and shall after reside here, he is guilty of High Treason. And this is

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not only thought so by us that are here, but by all my Lords the Judges that were present at your Tryal; for God forbid we should Condemn you for any thing as High Treason, if you had not been within the Compass of the Act of Parliament. And what is Treason, the Act of Parliament particularly Describes, which all hath been proved upon you. And because you are pleased to speak it to the Court, and lay it on the Consciences of the Court, I Discharge my Conscience, the Jury having Convicted you for High Treason, I am very ready to pass Judgment upon you according to the Law, and I will clear my Conscience of that presently. Tie him up.

*Cl. of Cr. William Russel*, hold up thy Hand, Thou art in the same Case, what canst thou say for thy self? &c.

*Russel*. I can say this, my Lord, that in my Conscience, I do not acknowledge my self Guilty of what they accuse me for, but I must submit to the Laws as they are made; but I do protest before Almighty God, and this whole Court, that I am innocent of all that is laid upon me.

*Mr. Recorder*. Why, what were you never at *Wild-house*, and said Mass there? I would feign hear, Whether you in the State and Condition you are in, (though your Jesuits have a Thousand Tricks and Evasions) have confidence enough to say you never were, nor said Mass there?

*Russel*. I ought not to accuse my self.

*Mr. Recorder*. You are Convicted. But every thing that you say is but an Evasion, and a Trick to catch and insnare the ignorant, but people of any sort of sense, will not be gull'd so.

*Russel*. For my Witnesses, you are my Witness, I have but one Witness upon that Business.

*Mr. Recorder*. The Jury have believed them.

*Russel*. 'Tis possible it may be so.

*Mr. Recorder*. Nay, 'tis beyond possible, 'tis true.

*Russel*. The Witnesses that have depose against me, for my part I know them not.

*Mr. Recorder*. You have heard of *Dr. Oates*, *Mr. Prence*, and of *Sir William Waller* too. Tie him up.

*Cl. of Cr. Charles Parris alias Parry*, hold up thy hand. You are in the same Condition, what have you to say?

*Parry*. What have I to say for my self? I have this to say, That those that did depose against me, did not say one word of Truth, I take God to witness for it. I am a Dead man by the Law, and I can Suffer, and I can praise God for his Holy will in that. I am as ready to Suffer the Law, as the Law is to inflict Suffering upon me, for it is for Gods glory; but I may pretend, and will pretend to, that I am not subject to the Law, inasmuch as I have declared, that I am a *Frenchman*, and they are to prove that I am not. I was threatned by *Sir William Waller* when I was under the protection of an Ambassador; and notwithstanding his protection, which was a Violation of the Law of Nations, that one under his protection should be so used, and that slighted as if it were nothing. But because they did not regard it, I shewed it under his Hand and Seal; I alledged  
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in the next place, that I was a *Frenchman*; but because I would not take my Oath that I was born a *Frenchman*, Sir *W. Waller* did threaten me with Irons; and therefore all that I said was compelled and forced from me; then I said I was a *Monmouth-shire* man, because my Father and my Mother were so, they are of that Countrey; but however it belonged to them to prove whether I was a *Frenchman* or no. *Lina* And

*Mr. Recorder*. No, I believe they cannot, would you have them prove you a *Frenchman*.

*Parry*. I alledged my self to be a *Frenchman*, but they would not believe me.

*Mr. Recorder*. Why, no body does. We believe you to be an *Englishman*.

*Parry*. And if it please you, they are to prove it.

*Mr. Recorder*. Well that is over now, Tie him up.

*Parry*. I am not a Subject, and as not a Subject, am not under the penal Laws.

*Cl. of Cr.* Set *Henry Starkey* to the Bar. *Henry Starkey*, hold up thy Hand. Thou art in the same Condition with him that went last before thee, what canst thou say for thy self? *Ec.*

*Starkey*. In the first place *Mr. Recorder*, here is *Mr. Prance* hath Sworn a false Oath.

*Mr. Recorder*. I must not hear that *Mr. Starkey*.

*Starkey*. Will you please to hear me Sir?

*Mr. Recorder*. I will give you all the freedom you can lawfully desire in the world, but it must be that which will consist with my Duty, and the Reverence you owe the Court. You shall not revile the Kings Evidence as long as I am here, by the help of God.

*Starkey*. If that it were true, that I had said Mass at my Lady *Somersets* and *Mr. Duncombs*, yet it is not sufficient to prove a man to be a Priest, for any man may take the Priests Garments, and do the Ceremony and the Office, because there are thousands that have suffered death for it that have not been Priests. And so, to do these Acts is not Evidence of being a Priest.

*Mr. Recorder*. Indeed I don't understand what makes a *Romish* Priest, nor do I desire it.

*Starkey*. But you will give me the Letter of the Law.

*Mr. Recorder*. And the Jury hath found you a Transgressor of the Law.

*Starkey*. The Letter of the Law is this. That if any one of the Queens Subjects, shall Transport himself beyond the Sea, and shall in a Seminary take Orders, by Authority derived from the See of Rome, and shall return into England, and shall not present himself here to the Ordinary, or else to such a certain number of Justices of the Peace within such a Term, but shall Seduce the Kings Liege people

*Mr. Recorder*. No that is another Act.

*Starkey*. Then he shall be adjudged a Traitor. Now *Mr. Recorder* I come to this, as I told you before, I had discovered a Plot to the King that was designed against his Person, State, and Government, and did deliver into his hands Eleven Articles of Treason, which I had Writ with my own hands; and this he hath owned, and will own. So *Mr.*

*Recorder,*



*Recorder*, upon this, I was Threatned by those that were parties to the Treason, That the King should not be gone twenty four hours, but I should be imprisoned. When the King went, what must I do? Must I stay there and hazard my life, or trust to the Kings Mercy? I was forced to come along with the King for Protection. I came to *White-hall*, and the King rose up and gave me his hand to kiss, and so did the Duke of York, and told me I was Welcome. I went to my Lord Chancellor *Hyde*, who, when he saw me, Embraced me in his Arms, and said, Thou art welcome, I am glad to see thee in *England*. I had occasion to speak with the Bishop of *London*, *Dr. Sheldon* about another Person, and when I came to him, he asked me, What is your Name? My Lord, said I, my name is *Starkey*, with that he catches me fast by the hand, and when he had done that, he took me in his Arms, and told me, I am glad with all my heart to see you safe here in *England*. And *Mr. Recorder*, I do suffer to this day for the Service I have done the King.

*Mr. Recorder*. *Mr. Starkey*, I can only say this to you, I do promise you faithfully, as I promised the other Gentleman that went before, I'll tell the King what you alledge. He is the best able to give an account of it, and is the fittest Judge of his own Mercy. But I could recommend to you, *Mr. Starkey*, a thing that would be very acceptable, and then as far forth as tis modest for me to speak, I am pretty well assured, I might say, I could prevail for Mercy to you, That is, as you did Discover one Plot before, so you would Discover this Hellish Plot that is now on foot.

*Starkey*. *Mr. Recorder*, I have wished many times that one of the Commissions that are said to be delivered out, had been brought to me; for he that had delivered me a Commission, should never have delivered a second to any one else.

*Mr. Recorder*. Well, the King is the Fountain of Mercy, and he is the best Judge of the fit Objects of it. I will, as I said, tell him what you say.

*Starkey*. If the King does not own what I told you, then count me the greatest Knave that ever was.

*Mr. Recorder*. You remain now under the Conviction of the Law, what Mercy the King, who is the Fountain of Mercy as well as of Justice, will extend to you, is in his own power.

*Starkey*. Then *Mr. Recorder*, I have another thing to offer to you, and that is the Kings General and free Act of Pardon, made in the Twenty fifth year of his Reign, wherein he pardons all Treasons, misprisions of Treasons, Felonies, and misprisions of Felony, except what is excepted thereafter, and Priesthood is not there excepted.

*Mr. Recorder*. You know very well, that the proof of your Treason hath been since the twenty fifth of this King, and within three years past. I presume you do not think that the Kings Act of Pardon pardons all Treasons past and to come, as the Popes Bull does Sins. Tye him up then.

*Starkey*. But how shall I do then, when I am Lame? I want a Leg, and I must use my Stick.

*Mr. Recorder*. Then let him alone.

*Starkey*.

*Starkey.* But I pray, good Mr. Recorder, will you be pleased before you give Sentence upon me, to acquaint the King with what I have to say for my self.

*Mr. Recorder.* No, I cannot do that, the Kings pleasure is to be known afterwards. Set *Lumsden* aside, and let all the rest to the Bar.

*Then Proclamation was made for Silence, Whilst Judgment was a giving.*

*Mr. Recorder.* **Y**OU the Prisoners at the Bar; You have been severally Accused, Arraigned—

*Starkey.* Mr. Recorder, May I speak one word? I have presented this year, wherein at the 26th. of this Month I have been a Prisoner, several Petitions by my Friends to the King, and desired to be Transported; for my Age and infirmities and want of a Leg did not stand well with my being in *England* these troublefom times. The King, I am told, hath promised I should, but I see no fruits of those Petitions. And pray consider this, That I should have been imprisoned if I stayed out of *England*, and now to be prosecuted in *England* in this manner, and to be Drawn, Hang'd, and Quartered is very hard.

*Mr. Recorder.* Whether it be true or not, God knows, I shall acquaint the King with it. It only remains with me to take notice of it for that purpose. And for my part I am sorry with all my heart to see so many persons brought to receive the Sentence of Death by my Mouth. But I must say this, You your selves have been the occasion of it, and therefore must blame your selves for it. You have had the benefit of the best Laws, the Law of *England*, which gives every Subject the liberty to make a defence for himself, when ever he is accused of any Crime; He hath the liberty to hear the Witnesses what they say against him; to call any Witnesses for him, and to make defence for himself. And not only so, but he hath likewise Twelve Men upon their Oaths, that are his Peers, against whom he hath the liberty to make a Challenge without shewing any reason, to a certain number; and if it shall appear that any of them have the least prejudice or malice against any Persons that are to be Tried for their Lives, to a greater number. Such and so great is the benefit of the Laws of *England*, beyond all the Laws of any other Nation in the world. But all these forms having been passed, and a Jury of men, against whom you made no Exception, having found you Guilty of the Offences for which you were Indicted, there remains now nothing more with the Court, but to pass that Judgment of Death upon you, which the Law requires, and which is the business that lies upon me now. But before I do that, for I know you may think it a presumption, or at least a needless

a needless and unnecessary thing for me to take upon me, and give any directions to you, the business of whose profession it hath been to give Precepts. However I think it is necessary for the Satisfaction of some persons that are here present, that I should give them some account, why I think this Law, and the putting it in execution at this time is not unreasonable. For it is to be known, that every Subject of this Realm by his being born within the Dominions of the King, does owe an immediate Allegiance to the King, and is to take notice by the Law, that there is not any person hath any Superiority over him; for under God he is the Supream Head and Honour. And if any person born within the Dominions of the King shall so far forget himself, and what he owes to the King by his Birth, and that Supremacy which he should maintain with his Life and Fortune, as to acknowledge any other Forreign person to be Supream, and to have a power to Depose the King, and dispose of his Dominions (as every one does, that takes Orders from the See of Rome) he cannot but be thought deserving of the greatest punishment. Wherefore the Wisdom of our Nation, the Parliament, at the time when they made the Law, found that the Religion Established (that Religion which I hope in God will remain notwithstanding all the Enemies it ever had or shall have) was invaded by such Priests as you: they found the Life of the Queen at that time in great danger, by the attempts of those Persons whom they had made their Profelytes, into whom they had infused Principles, That it was no Crime for them to depose their Queen, since they had the Authority of their Pope to justify the Fact. And if once men can Preach such Doctrine, and also but prevail with their Hearers to be of such a Perswasion; if care were not taken, we shall soon see an end of all sort of Government, and of our Religion too. But in as much as these Principles were not so visibly endeavoured to be put in practice till of late times, though you were not permitted, but connived at, yet that is no Reason but the occasion of making the Law being revived, the Execution of the Law should revive with it. I suppose it is not unknown to any of us, that there hath been an Hellish Plot against the life of the King, and to destroy our Religion, I would to God I could say the Plot was at an end. For I must say, Some of you, I fear, had too great a hand in it: and what a sort of Monsters were prevailed upon to compass the same, by you that are Priests and Jesuits, who have wrought them up to such a belief, that Murder in this World is a certain way to Saintship in that which is to come. And though you seem to deny it, your practices are a proof of it beyond all contradiction, which is the reason that this Law, which was a good Law at the time of the making, and thought fit to be put in Execution then, though it hath slept some time since, should now be put in Execution against you, who have occasioned all those mischiefs to this Nation in these latter times, which occasioned the making of the Law. And one thing more I should say to that man, who pretends to merit by the good



good Services he hath done for the publick, that he should injoin a man to scour his Kettle, as he calls it, to receive the Sacrament, and then give him a Dispensation to be Drunk, and make another so ; to promote a damnable Design, is such a power of Priesthood, fit only for the Pope and his Imps to put in practice.

But to say no more ; in Charity I am bound to Compassionate your Condition, which with all my Soul I do, and heartily can say to you, I am sorry to see you in that misery ; it was in your own power to have prevented it ; but seeing you have made yourselves Obnoxious to the Law, the only thing required of me, is to pronounce the Sentence that that Law hath Decreed. And therefore in the Name of the Court, I do pronounce this to be your Judgment.

*Marshall.* May I ask one Question, Mr. Recorder, before you pronounce Sentence ?

*Mr. Recorder.* No, Mr. Marshall, you can't speak now ; but this is your Judgment, and the Court does award it, That you the several Prisoners now at the Bar, be conveyed from hence to the place from whence you came ; and that you and every of you be conveyed from thence on Hurdles to the place of Execution, where every of you are to be severally Hang'd by the Neck ; That you be severally cut down alive ; That your Privy Members be cut off, your Bowels taken out and be burnt in your view ; That your Heads be severed from your Bodies ; That your Bodies be divided into four Quarters, which are to be disposed at the Kings pleasure. And the God of infinite Mercy, have mercy upon your Souls.

Then the Prisoners were carried away, and the Court Adjourned the Sessions.

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